National Green Tribunal on Western Himalayas



Handbook

Second Edition, 2023

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Himalayan Advocacy Center
Second Edition, 2023

National Green Tribunal on Western Himalayas Handbook

Edited by
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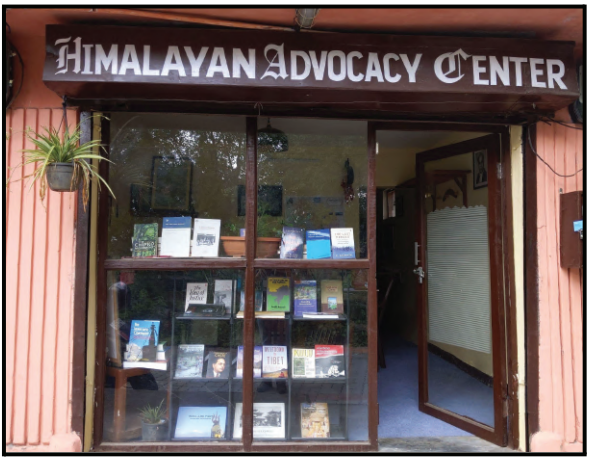
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In the memory of
Mrs. Ravi Kanta Jain (1942 - 2021) & Mr. Amrit Lal Jain (1934 - 2022)

Front Matter

About us

Himalayan Advocacy Center is a Dharamshala based organization in the environment + law space. The Center initially began operations in April, 2021 and got registered as a nonprofit under Section 8 of the Companies Act, 2013 in October, 2022.

The Himalayas face complex environmental threats. We at the Center are now on-ground to monitor, understand and address these threats. This handbook, along with our judicial and legislative tracking efforts are focussed on each of those goals, in turn building on Principle 10 of the Rio Declaration, 1992, Sustainable Development Goal 16 and the Right to Information Act, 2005.

We care deeply about:

📍 Location: doing high quality public interest work from small towns

💬 Collaboration: working with everyone to solve hard problems

🌱 Novelty: building in the third pole

Since 2022, we have started bridging these gaps from a library and community space in Dharamshala, also pictured above.

If our work has proved to be valuable to you, please do consider giving to us via the Razorpay secured code below. We are proud to be registered under Section 80G of the Income Tax Act, 1961 which makes your donation eligible for tax deductions.

Remarks from the Bar

Law cannot be stagnant, it evolves during the course of time. Other than legislatures, laws are framed and clarified by judicial decisions and if you want to use law as one of the tools to protect environmental rights of all including nature, you need to be updated of all the developments in the field of environmental jurisprudence.

After the establishment of National Green Tribunal, several rulings have come conserving the environment region, however it's a difficult task for non-lawyers or even lawyers to locate the relevant orders and judgments concerning Himalaya. The Himalayan Advocacy Center has undertaken a mammoth task of compiling all important orders and judgments for Himalayan region.

To start with, this Dharamshala based organization has come out with the compilation of NGT orders and judgments of Western Himalayas consisting of Uttrakhand, Himachal Pradesh, Jammu & Kashmir and Ladakh. As Abraham Lincoln said, "Towering genius disdains a beaten path. It seeks regions hitherto unexplored."

This attempt by the Center, led by a young environmental lawyer will help many in accessing court orders and judgments.

Rahul Choudhary
Advocate & Cofounder, Legal Initiative for Forest and Environment (LIFE), Delhi

It brings me great pleasure to state that this collection of orders and judgments is a much-needed resource that identifies and summarizes all the environmental issues in the western Himalayas that were brought before the Honourable Tribunal.

The team at the Himalayan Advocacy Center has accomplished an amazing feat by not only providing a summarized commentary on the cases/judgments but also by performing a detailed analytical work by attaching additional links for easy understanding via Google location, news articles, research documents, court order links, photographs, complete references, etc. Additionally, by dividing the chapters according to State boundaries, the book has further streamlined research.

It also distinguishes itself as a unique handbook by providing readers with a comprehensive and continuous source of information on a case on the same page. Not just for law students, attorneys, and judges, but for anybody interested in working in the field of ecological conservation in the western Himalayas or who is even vaguely related to the topic, this handbook will be of great use.

Katyayni Chaubey
Advocate & Visiting faculty, School of Planning & Architecture, Delhi
(also assisting M.C. Mehta & Co.)
B.A (Geography), LL.B., LL.M.

Preface to the Second Edition

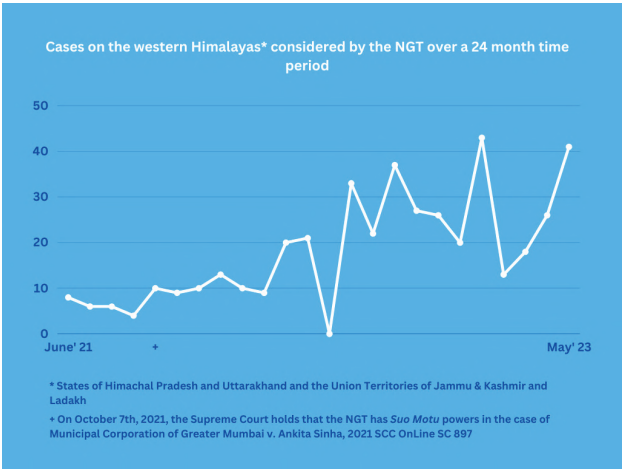
The second edition represents a great leap forward for the Center's tracking efforts which began in June, 2021. By the end of May, 2022, three of us had tracked a total of 126 judicial orders concerning the western Indian Himalayas. That number almost quadrupled from last year, to reach a figure of 431 by the end of May, 2023, covering a total of about 2,500 pages if one were to consider judicial orders alone. We are proud to share that this handbook presents this information in less than 200 pages, made possible by a team of six. Going forward, our aim will be to expand our tracking and publishing work to cover the entire Indian Himalayan region and thanks to dedicated colleagues, progress on this task is well underway.

The increase in environmental litigation since the pandemic is particularly notable. Out of a total of 431 judicial orders, the updated second edition introduces the reader to a total of 162 cases disposed[1] of by the National Green Tribunal **("NGT")** between June, 2022 - May, 2023, our specialized environmental court here in India. Out of these

[1] Or otherwise dismissed, rejected or concluded.

162 cases, less than 4% cases (6) carried over from the previous year of tracking[2].

The following graph demonstrates the rising importance of this region when it comes to environmental law **("EL")** in India and hopefully incentivises those across the border from Pakistan, Xinjiang, Tibet, Afghanistan and Nepal, and indeed fellow citizens from the various other ecologically sensitive areas of India to carry out their own mapping exercises:



[2] Yogindra Mohan Sengupta v. Union of India, Original Application 121 of 2014 read with Yogendra Mohan Sengupta v. Union of India Original Application 297 of 2022, Court on its Own Motion v. State of Himachal Pradesh, Original Application 389 of 2018 read with Court on its own Motion v. State of Himachal Pradesh 2023 SCC OnLine NGT 146, Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh, Original application 136 of 2020 read with Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh 2022 SCC OnLine NGT 253, Naveen Rana v. State of Uttarakhand, Original Application 296 of 2022 read with Naveen Rana v. State of Uttarakhand Original Application 296 of 2022 and Naveen Rana v. State of Uttarakhand, Original Application 296 of 2022, Pramod Kumar Sharma v. Uttarakhand Environment Protection & Pollution Control Board, Original Application 316 of 2021 read with Pramod Kumar Sharma v. Uttarakhand Environment Protection and Pollution Control Board Miscellaneous Application 67 of 2022 in Original Application 316 of 2021.

This “leap” would not have been possible without a highly competent team of colleagues who joined me from educational institutions across India since 2021. On behalf of the Center, I am grateful to Ritika Singh, Nirma University, Ahmedabad, Deepansh Tripathi, South Asian University, Delhi, Tenzin Bhutia, National Law University, Delhi, Chaitanya Basotra, National Law University, Delhi, Mansi Tekam, National Law Institute University, Bhopal, Hari Vallabi, National Institute of Technology, Trichy and Dunya Habung, Jawaharlal Nehru University, Delhi, for their hard work.

We, at the Center, are also proud of the fact that our tracking efforts have been shared with District Magistrates **(“DM”)**, Pollution Control Board **(“PCB”)** and Committee officials, Block Development Officers, Members of Legislative Assemblies and Members of Parliament from across the western Himalayan region. Not limiting our scope of work to India, we have also made it a point to share our work with organizations representing our neighbors across the border in Tibet (Central Tibetan Administration) and Xinjiang (World Uyghur Congress).

Due to feedback from and discussions with colleagues, the second edition is far more navigable than the first, indicating to the reader key information about cases concerning larger policy issues, climate change and bench strength. Cases have now been divided statewise, with peer reviewed synopses provided for each state to assist the reader in their ongoing understanding of precisely how environmental issues are unraveling in this region. As mentioned above, the 6 cases which carried over from last year have been restated under a separate

heading, especially considering the complexity involved in most of these. Needless to mention, parts of the first edition that made it so accessible have been retained - maintaining the integrity of primary sources, chronological organizing, comprehensive hyperlinking and footnoting. As before, all efforts have been made to provide Black's law dictionary definitions for complex words and phrases.

The online version of this handbook was initially shared with the community in August, 2023. We are proud to have successfully created a physical edition for the benefit of those interested in the Indian Himalayan region. To achieve this, we have taken advantage of dynamic QR codes in order to enhance the reading experience. Simply scan the code on the back cover to access our website and the online version of this handbook, should you wish to delve into further detail on a particular issue. The Center highly recommends that the readers take full advantage of both online and print versions of the handbook.

I have come to understand that words are perhaps a lawyers' most powerful asset, whether spoken or written. While there is much that remains to be given back to arguably the most strikingly beautiful mountain system in the world, I am proud of the contemporary relevance, accessibility and sizable dataset that this handbook presents to the reader. If nothing else, my hope for this handbook is that it will present a clear picture of "what is" when it comes to environmental issues in the Himalayas. As always, the "what can be" must necessarily be left to those that are from the Himalayas and feel a deep sense of respect and awe toward the region.

Utkarsh Jain
Director

Preface to the First Edition

The process of compiling and organizing this handbook came from a need felt by all practicing advocates - the need to keep themselves updated with the law, and its interpretation by the courts of law. I also always wished to give back to the Western Himalayas, where I grew up, in a way that merged this proximity to the region with my profession. Then there were the books[3] and law review articles[4] on the need for lawyers to work on the field, as assistants and not protagonists. It seemed intuitive then, to start with mapping all orders of the NGT relevant to this region, in an easy to read and usable and contemporary format.

Although there is extensive literature[5] providing a broad overview[6] of the NGT, lasting attention towards how the Himalayas have shaped its jurisprudence and *vice versa* is scant, scattered or dated. This effort[7] was undertaken, with a sole focus on the Western Himalayan region

[3] "What is 'Rebellious Lawyering'?," Rebellious Lawyering Institute, Rebellious Lawyering, 2015 available at: https://rebelliouslawyeringinstitute.org/what-is-rebellious-lawyering/.

[4] Cole, "Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law," 19 *Ecology Law Quarterly*.

[5] Gill, G. (2016). Environmental Justice in India: The National Green Tribunal and Expert Members. *Transnational Environmental Law, 5*(1), 175-205. doi:10.1017/S2047102515000278.

[6] Dutta, R. and Purohit, S. (2016). Commentary on the National Green Tribunal Act, 2010, Universal, ISBN: 9789350355046.

[7] With support from Ritika Singh, Institute of Law, Nirma University, and Deepansh Tripathi, South Asian University.

consisting of Uttarakhand **("U.K")**, Himachal Pradesh **("H.P")** and Jammu & Kashmir and Ladakh[8] **("JKL")**. This region is at a crucial international frontier[9] where the environment[10] and international relations suffer from great instability, directly impacting two of Asia's most important river basins - Sindhu and Ganga, and India's defense priorities[11]. Himalayan ecology often finds itself at the very center of this instability.

What you are reading gathers a fairly representative picture of how the NGT has considered and settled environmental issues of the Western Himalayas over a time period of one year (June 1st, 2021 - May 31st, 2022). Each case summary is vividly referenced, keeping context in mind. This means that you can visualize the reports, policies, legislation and most importantly, the location behind a judicial order on the click of a button. The Black's Law dictionary definitions of certain crucial (and commonly used by the Tribunal) terms have been duly added in footnotes.

Although the case summaries have been arranged in chronological order, orders passed in connected execution, miscellaneous, and

[8] Although Jammu & Kashmir and Ladakh are two separate Union Territories, the nomenclature used by the High Court at Sringar is 'Jammu & Kashmir and Ladakh', has been adopted in this handbook, with due respect. This is with the exception of case titles and separate nomenclatures used by agencies like the 'Jammu & Kashmir State Pollution Control Board'.

[9] P. Wester, A. Mishra, A. Mukherji, A. B. Shrestha (eds) (2019) The Hindu Kush Himalaya Assessment—Mountains, Climate Change, Sustainability and People Springer Nature Switzerland AG, Cham.

[10] Pathak, S. (2020). Chipko Movement: A People's History, Orient Blackswan, ISBN: 9788178245553. Available at https://orientblackswan.com/details?id=9788178245553.

[11] Citizens for Green Doon v. Union of India, Civil Appeal 10930 of 2018, judgment dated December 14th, 2021.

review applications have been placed together for convenience. The subject matter of each case has also been flagged with key words - for instance, sand mining, stone crushing, construction or a combination of such issues. 'Standard' subject matter/issue based classifications have been left out in the interest of preserving subjectivity.

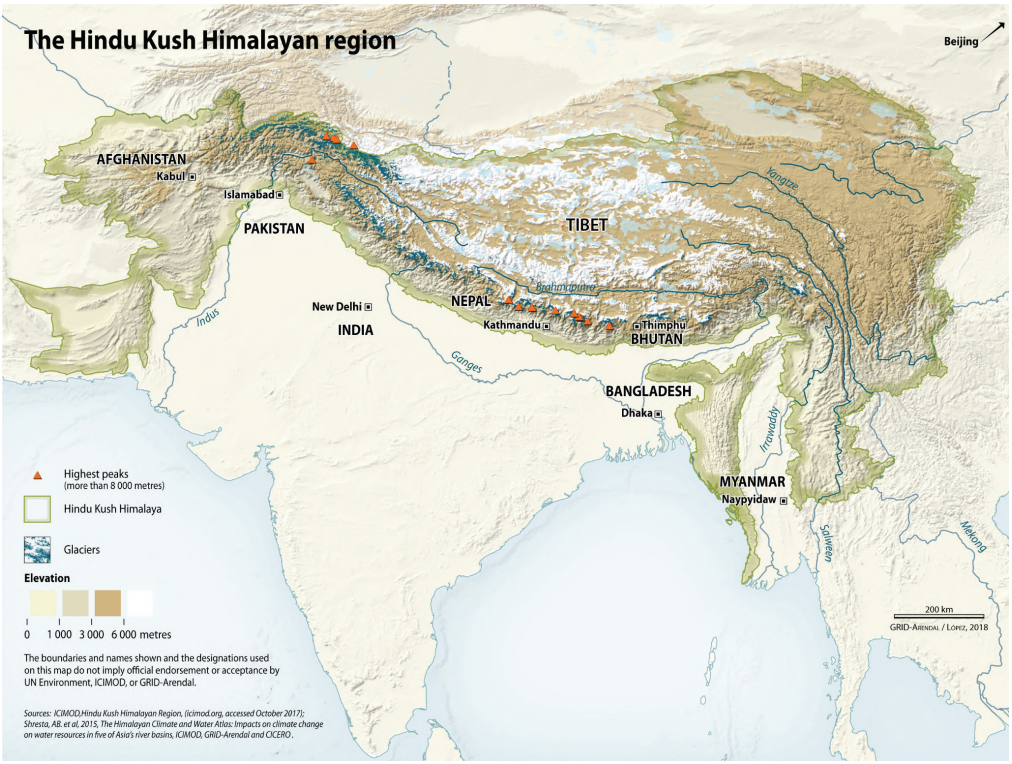
It may be noted that many cases of significant importance are still being adjudicated by the Tribunal, hence not making it to these pages. However, considering major pending issues on law and fact, including on high altitude urban planning[12], and watershed conservation[13], the Himalayan Advocacy Center continues to track these issues via our website and google maps, which pair well with this handbook for all those interested in a more granular approach.

It is our hope at the Center that this handbook only evolves from here, to incorporate more orders and perspectives from the ground and Tribunal itself, over time. A collection of judicial orders is insightful in ways that reading individual orders is not. What those ways are, only time can tell - for to lay them out prematurely here would be to submit to the need to drive the narrative - which properly belongs in the hands of those that are facing environmental issues.

Utkarsh Jain
Director
Monsoon, 2022

[12] Yogendra Mohan Sengupta v. Union of India, Original Application 297 of 2022, order dated 12th May, 2022.

[13] Raja Muzaffar Bhat v. Union of India, Original Application 241 of 2021, order dated 8th March, 2022.



Source: ICIMOD[14]

[14] Access the HI-WISE report at the website of the International Centre for Integrated Mountain Development.

Overview

At about 10% of India's area and 55.5% of the Indian Himalayan region **("IHR")**, Jammu & Kashmir, Ladakh, H.P and U.K lie in the western Hindu Kush Himalayan region **("WHR")**, one of the most strikingly beautiful and diverse landscapes in the world[15]. The WHR is home to 5 of the 14 highest mountain peaks in the world[16]. It is also home to the Kailash, arguably the holiest place for three ancient dharmas namely Buddh, Jaina and Hindu.

The WHR covers parts of Pakistan, Afghanistan, India, Xinjiang and Tibet, and borders Tajikistan and Iran. It gives rise to five major river systems namely the Tarim, Amu, Sindhu, Ganga and Brahmaputra (ཡར་ཀླུང་དཔག་ཚད་པ་), collectively sustaining billions of people spread across Asia, from the Aral sea in Kazakhstan to the Gulf of Oman in Balochistan through to Shundorbon in India and Bangladesh. It is home to people who speak Dari, Pashto, Tajik, Balochi, Urdu, Hindi, Punjabi, Pahari, Dogri, Gujjari, Tibetan, Uighur, Kashmiri, Garhwali, Kumaoni and English to name just a few.

From one perspective, the WHR is an unstable region. It is highly seismically active and one of the most vulnerable[17] to climate change in the world. Violently contested between India, China and Pakistan,

[15] *See* State of Forest Report, 2021 by the Forest Survey of India, available here.

[16] Nanga Parbat, K2, Broad Peak, Gasherbrum I and Gasherbrum II.

[17] Maharjan, A., McDowell, G., Pandey, A., Pasakhala, B., Shrestha, M., & Wang, X. (2023). Cryospheric change, adaptation, and sustainable development in the mountain societies of the Hindu Kush Himalaya. In ICIMOD (P. Wester, S. Chaudhary, N. Chettri, M. Jackson, A. Maharjan, S. Nepal & J. F. Steiner [Eds.]), Water, ice, society, and ecosystems in the Hindu Kush Himalaya: An outlook (pp. 165–217). ICIMOD. https://doi. org/10.53055/ICIMOD.1033.

three nuclear armed nations, it is one of the most militarized zones[18] on the planet. This has been in response to contested borders between the three nations, terrorism, insurgency and strife, created in part due to a haphazard British withdrawal from the Indian subcontinent, occupation of Aksai Chin, Tibet and Xinjiang by the Chinese People's Liberation Army and the cold war between the Soviet Union and United States of America through the 20th century.



Source: ICIMOD

[18] *See* article titled "India and China caught in vicious cycle to secure the Himalayan heights" by Manoj Joshi available at https://www.orfonline.org/research/india-and-china-caught-in-vicious-cycle/.

Considering the remote, largely inhospitable and unstable nature of the WHR one can imagine the kind of challenges it would pose to the successful establishment and operation of an EL system, which in and of itself is a recent occurrence[19] in legal history (at least in its current widely accepted form).

Looked at from another perspective, we have before us a region so difficult to navigate in every sense of the word that it pushes the EL regime to its extremes - which are its frequent and glaring failures on the one hand and inevitable reform on the other (both of which the reader will note in the handbook).

India then, a democratic nation in an illiberal neighborhood, plays an indispensable role when it comes to accessing information on and the environmental status of the WHR. At Himalayan Advocacy Center, it is our hope that laying out contemporary and primary sources of information on that status will play an important role in the more optimistic “reform” scenario mentioned above.

What does this reform look like and which direction is it taking EL towards? Perhaps it will be towards a more meditative EL regime - our monitoring since the past two years demonstrates that the WHR is nudging and occasionally forcing the Tribunal (and in turn EL) to slowly but surely open its eyes and observe natural processes not always visible, zoom out and look at larger land and waterscapes and when necessary, put the blinkers on and stop myopic developmental views from taking firm root, often at the risk of overstepping its institutional boundaries.

[19] Fisher, Elizabeth, 'The history of environmental law', *Environmental Law: A Very Short Introduction*, Very Short Introductions (Oxford, 2017; online edn, Oxford Academic, 26 Oct. 2017), https://doi.org/10.1093/actrade/9780198794189.003.0004, accessed 7 Sept. 2023.

Guidance and use case

1. This handbook forms part of the few remaining compilations of primary sources of information on the Himalayan environment prepared by an independent organization based in the Indian Himalayan region (in this case judicial orders and reports submitted to a judicial institution i.e. NGT).

 Due to the sheer volume of primary sources hyperlinked in the handbook and summarization achieved by a team of lawyers and legal researchers from law schools across India, it will prove useful to anyone wanting to take action to protect the Himalayan region, including by writing, litigation, research, administration & policy making or speaking.

2. We intentionally designed this document to be a handbook rather than a casebook. The need to balance brevity with enough background information to allow for independent research, time period for which judicial orders were considered, and an audience beyond legal professionals informed our choices.

3. The online version of this handbook (refer to the QR code in the preface to the second edition) is extensively hyperlinked in order to make it more accessible. Links are spread across the main body as well as the footnotes. We urge the reader to click on these hyperlinks to access judicial orders, news reports, expert committee reports, google map locations relevant to the environmental issue at hand and the like. For this physical edition, we have converted all hyperlinks to endnotes which the reader may also refer to.

4. We have made diligent efforts to add Black's law dictionary definitions for complex legalese in this document. However, in case a definition is not provided, kindly select the concerned word, right click and use Google's integrated dictionary for assistance. Please feel free to reach out to us for any clarifications.

5. The second edition covers cases disposed, dismissed, settled or otherwise concluded by the Tribunal from June, 2021 through May, 2023.

 For further detail on ongoing litigation, we suggest the reader refer to our judicial tracker for information on all cases, disposed or ongoing. The tracker is available on Google Maps as well as Google Docs. To access, scan the following QR code:



6. This year onwards, we have created a separate section consisting of cases that ended up being considered again despite having been disposed of earlier. They form an important category, signifying issues subsisting over prolonged litigation cycles.

7. We have arranged case summaries in the following format, with the exception of connected cases mentioned in the next point:

 Line 1: <5 & 6 judge bench if applicable> <Policy Indicator if applicable("P" emoji)> <Climate Change relevance indicator (earth emoji) if applicable> <Hyprlinked case title> <Citation/Case number> <Date> <bench strength>
 Line 2: <Keywords with hyperlinks where applicable>
 Line 3 onwards: <Summary with hyperlinks where applicable>

As the reader will note, the navigability has been improved in this edition with updates made throughout.

8. For connected cases, i.e. miscellaneous, review or execution applications pertaining to the same issue, the format used is similar with keywords and Line 1 indicators depicted as a separate heading followed by the series of connected cases.

9. A case number has been provided for those judicial orders which have not been reported by SCC OnLine.

10. We take accessibility seriously and urge the reader to share this work in accordance with the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International license.

11. For convenience, all cases from the first edition of this handbook have been added to this edition as well.

12. For any suggestions, collaborations, giving/supporting us, queries or inquiries:

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 Razorpay secured + 80G deductible donation link: Scan the QR code below

Carried over cases

Carried over cases[20] (6)

1. **Jeewan Chandra Kashneyal v. Bhuwan Chandra Kapri**

 food processing industry, continuing violation of norms, execution of orders

 a. **Jeewan Chandra Kashneyal v. Bhuwan Chandra Kapri** Miscellaneous Application 51 of 2022 in Original Application 258 of 2021 Dec 19, 2022 ③

 The petitioner raised an issue of non-compliance with the orders[21] of the Tribunal directing the DM of Pithoragarh to take remedial action with respect to an Atta Chakki and Masala Udyog that was alleged to be operating in violation of environmental norms.
 When the case was last considered, the Tribunal directed the DM to submit a compliance report within one month. In the absence of any report, the Tribunal reiterated its directions and disposed the case with liberty to the petitioner to avail remedies if necessary action is not taken.

 b. **Jeewan Chandra Kashneyal v. Bhuwan Chandra Kapri, Original Application 258 of 2021** Nov 9, 2021 ③

 This case concerns the operation of an Atta Chakki and Masala Udyog causing noise and air pollution in Tildhukari, Pithoragarh, Uttrakhand. According to the district administration and PCB, the

[20] As mentioned in the preface to the second edition, carried over cases indicate those cases which arose for consideration before the Tribunal from June, 2022 to June, 2023 despite having been disposed of during June, 2021 to June, 2022. Orders in this list have been organized in reverse chronological order i.e latest date first.

[21] Jeewan Chandra Kashneyal v. Bhuwan Chandra Kapri, Original Application 258 of 2021, Order dated 9th November, 2021.

unit had not been granted any permits under EL for operating. Importantly, the Tribunal noted that a mere finding of operation without permit was not enough, and PCBs are under a statutory obligation to keep strict vigil and take enforcement action with respect to any activity causing or likely to cause pollution. Such action needs to be taken whether or not someone approaches them with a complaint. The Tribunal therefore directed the PCB and district administration to take action within a period of two months.

2. P **Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh (11 nov 22)**

pharmaceutical waste, river, public health, protracted litigation, judicial governance, powers of Tribunal, standards for pharmaceutical waste, sustainable development, implementation and execution of Tribunal's decision

a. **Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh** 2022 SCC OnLine NGT 253 Nov 11, 2022 ④

This case concerns a judgment[22] concerning dumping of pharmaceutical waste in rivers by industries in Baddi Industrial Area. In that judgment, the Tribunal had directed the enforcement of draft standards with regard to active pharmaceutical ingredients and other compounds, in light of the alarming state of affairs and risk of resistant pathogens developing due to contact with these

[22] Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh, Original Application 136 0f 2020, order dated 6th April, 2022.

effluents. The draft standards[23] developed by the Ministry of Environment, Forest and Climate Change **("MoEFCC")** had not yet been finalized due to various issues including market pressures and competition with the Chinese pharmaceutical market.

On the last occasion, the Ministry approached the Tribunal seeking a review of its judgment on the ground that the Tribunal could not have enforced draft standards. The Tribunal rejected[24] the application stating that a rehearing of the matter could not have been permitted based on a review application and more importantly, it had the jurisdiction to enforce principles of sustainable development under law, even if these were beyond decisions made by the Ministry. The Tribunal relied on a 2019 Supreme Court **("SC")** judgment to substantiate its reasoning, where its wide ranging powers were upheld by the court.

Now, the petitioner has approached the Tribunal for execution of its judgment considering that non-compliance continues on ground. The Tribunal directed the MoEFCC and the State PCB to look into the matter and take further remedial measures in accordance with law. If any non-compliance continues, the Tribunal left it open to the petitioner to take remedies under section 30 of the NGT Act for prosecution for offense under section 26 of the NGT Act, 2010 before the concerned Area Magistrate.

[23] Refer to affidavit filed by the Ministry of Environment, Forest and Climate Change dated 4th April, 2022 in the Veterans Forum case, available on the "reports" section of the National Green Tribunal Website (search "Veterans").

[24] Review application filed by the Ministry of Environment, Forest and Climate Change in Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh, Review Application 14 of 2022 in Original Application 136 of 2020, order dated 24th May, 2022.

b. ⑥ Review Application 14 of 2022 in Original Application 136 of 2020 filed by MoEFCC May 24, 2022

This case concerns a judgment concerning dumping of pharmaceutical waste in rivers by industries in Baddi Industrial Area. In that judgment, the Tribunal had directed the enforcement of draft standards with regard to active pharmaceutical ingredients and other compounds, in light of the alarming state of affairs and risk of resistant pathogens developing due to contact with these effluents. The draft standards developed by the MoEFCC had not yet been finalized due to various issues including market pressures and competition[25] with the Chinese pharmaceutical market. The Ministry approached the Tribunal seeking a review of its judgment on the ground that the Tribunal could not have enforced draft standards. The Tribunal rejected the application stating that a rehearing of the matter could not have been permitted based on a review application and more importantly, it had the jurisdiction to enforce principles of sustainable development under law, even if these were beyond[26] decisions made by the Ministry. The Tribunal relied on a 2019 SC judgment[27] to substantiate its reasoning, where its wide ranging powers were upheld by the court.

[25] Buddhavarapu, Ravi, "India wants to be the 'pharmacy of the world.' But first, it must wean itself from China", CNBC, dated 27th May, 2022.

[26] For a recent commentary on the powers of the NGT, *see* Madhya Pradesh High Court Advocates Bar Association v. Union of India, 2022 SCC OnLine SC 639.

[27] Mantri Techzone (P) Ltd. v. Forward Foundation, (2019) 18 SCC 494.

c. ⑥ **Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh Original Application 136 of 2020** Apr 6, 2022

The facts demonstrate two broad issues - (a) the risk of antimicrobial resistance[28] (AMR) developing as a result of discharge of large amounts of active pharmaceutical ingredients[29] (API) in water bodies, and (b) the inability of Common Effluent Treatment Plants and Industrial units to treat effluents before discharge into water bodies. These issues were exacerbated due to the lack of effluent standards developed by the CPCB, monitoring by PCBs concerning violations, and creation of new classes of effluents due to mixing, which were not predicted by existing law and technology. In the meantime, at the instance of the Tribunal, expert reports from the CPCB and MoEFCC led to guidelines[30] and standards[31] to tackle these complex issues. The Tribunal reiterated

[28] Antimicrobial Resistance (AMR) occurs when bacteria, viruses, fungi and parasites change over time and no longer respond to medicines making infections harder to treat and increasing the risk of disease spread, severe illness and death, World Health Organization.

[29] Active pharmaceutical ingredient (API), is the term used to refer to the biologically active component of a drug product (e.g. tablet, capsule). Drug products are usually composed of several components. The aforementioned API is the primary ingredient. Other ingredients are commonly known as "excipients" and these substances are always required to be biologically safe, often making up a variable fraction of the drug product. The procedure for optimizing and compositing this mixture of components used in the drug is known as "formulation." Science Daily, article dated June 5th, 2014.

[30] Refer to affidavit dated 15th February, 2022 filed by Central Pollution Control Board in the Veterans Forum case, available on the “reports” section of the National Green Tribunal website (search “Veterans”).

[31] Refer to affidavit filed by the Ministry of Environment, Forest and Climate Change dated 4th April, 2022 in the Veterans Forum case, available on the “reports” section of the National Green Tribunal Website (search “Veterans”).

its earlier directions that defaulting industries are to be closed and held accountable under law by the PCB. It also took a serious view on the absence of standards for certain pharmaceutical compounds (even in the final notification developed by the MoEFCC during the course of the proceedings) and directed that "pending finalization by the MoEFCC, standards proposed in the draft Notification dated 23rd January, 2020, which are based on expert studies, be strictly followed by all concerned". Finally it directed PCBs across India to strictly abide by the CPCB guidelines to tackle such issues developed in 2022 particularly with respect to "monitoring of API and assess Predicted No-Effect Concentration[32] (PNEC) values" and for effluent treatment plants to be suitably upgraded.

3. **Naveen Rana v. State of Uttarakhand**

 construction, floodplain, clarification on prohibited distance in floodplain zone, public servant as petitioner

 a. **Naveen Rana v. State of Uttarakhand Original Application 296 of 2022** **Nov 2, 2022** ②

 The petitioner, a member of Nagar Panchayat, Swarg Aashram (Gharwal) had raised the issue of unlawful construction of shops within the distance of 100 meters from river Ganga by the Swargashram Trust, Rishikesh. According to the petitioner, The vendors have encroached on the bathing ghats and even toilets constructed during Kumbh Mela outside Vanprasth Ashram. The

[32] Antonio Finizio, Sara Villa and Marco Vighi, "Predicted No Effect Concentration (PNEC)," Science Direct, available at: https://www.sciencedirect.com/science/article/abs/pii/B978012824315200004X.

area has become prone to untoward accidents because of use of highly inflammable fuel by the vendors.

According to the response[33] filed on behalf of the DM, Pauri, it was found that land owned by the Swargashram Trust is situated at a distance of 205 meters from the middle of river Ganga and 60 to 65 meters from the edge of river Ganga. The Tribunal found that the same does not fall within the floodplain zone of river Ganga[34].

The construction, being raised by the trust without any map, was stopped by issuance of show cause notices. The Tribunal was informed that the Trust has now submitted an application for approval of its map of construction which is under process with the concerned authority.

On the basis of this information, the Tribunal refused to intervene and disposed of the case.

b. **Naveen Rana v. State of Uttarakhand, Original Application 296 of 2022** May 5, 2022 ②

This case concerns the construction of shops at Swarg Ashram, at a distance of 100 meters from the Ganga without any construction plan authorization and in violation of orders of the Tribunal[35] and Uttarakhand High Court[36]. The Tribunal constituted a committee

[33] *See* response dated July 15th, 2022, filed by the District Magistrate, Pauri, in the Naveen Rana case, available on the "reports" section of the National Green Tribunal Website (search "Naveen Rana").

[34] *See also* 2017 SCC OnLine NGT 1980, Para 414(7).

[35] M.C Mehta v. Union of India, (2017) SCC OnLine NGT 1980.

[36] D.S. Kunwar, "Uttarakhand HC bans construction near rivers", Times of India, dated August 27th, 2013.

of the PCB and DM, Pauri Garhwal to look into the grievances of the petitioner, and take suitable remedial action.

4. P **Yogendra Mohan Sengupta v. Union of India**

urban planning, mountainous area, carrying capacity, protracted litigation, executive overreach, illegality of master plan

a. **Yogendra Mohan Sengupta v. Union of India** Original Application 297 of 2022 Oct 14, 2022 ④

This case concerns large-scale ill planning by the Town and Country Planning department **("TCP")** with respect to the city of Shimla. Specifically, the publication of the 2041 draft development plan in direct violation of a previous judgment of the Tribunal on the same issue. In its 2017 judgment, the Tribunal had imposed wide-ranging and comprehensive restrictions of development of any kind in the Shimla Planning area, especially in core and forest areas and water bodies therein. It specifically held and declared that:

"*If such unplanned and indiscriminate development is permitted there will be irreparable loss and damage to the environment, ecology and natural resources on the one hand and inevitable disaster on the other.*"

As opposed to these directions, the State of H.P published a draft development plan of 2041 in February, 2022, wherein it effectively acted as an appellate authority over the Tribunal, explicitly "*permitting construction of more floors, new constructions in core area, constructions in green area, permitting development in sinking and sliding area*".

When the case was last heard, the Tribunal expressed its deep anguish on the publication of the draft plan and as an interim measure, restrained the TCP from taking any steps in furtherance thereof, violating which the Chief Secretary **("CS")** would be held personally accountable. Further, it found the observations and and proposals in the plan to be patently illegal. The Tribunal also sought responses from the State within one month, particularly on the issue of why the prayer of the petitioner to penalize concerned authorities not be granted.

After due consideration of the responses filed, the Tribunal found that there is no jurisdiction[37] with the State to annul or ignore the order of the Tribunal. Any other view will negate the rule of law and defeat the purpose of setting up this Tribunal. State's view is not final in view of overriding provisions of NGT Act by virtue of express provision under section 33. Accordingly, the Tribunal held that the draft development plan, 2041, being in conflict with its judgment is illegal and cannot be given effect. Any action taken in violation of the said judgment cannot be validated by the said plan and will remain illegal.

b. Miscellaneous Application 22 of 2022 in Original Application 121 of 2014 filed by the petitioner Apr 12, 2022 ⑤

Yogendra Mohan Sengupta, the petitioner in the 2017 judgment, filed this application raising the issue of the 2041 Shimla Masterplan. The petitioner alleged that the plan was in violation of the judgment of the tribunal in the Yogendra Mohan Sengupta case. The Tribunal, whilst relying on other orders passed in similar

[37] *See* Jurisdiction: A court's power to decide a case or issue a decree, Black's Law dictionary, 9th Edition.

applications, found that a master plan could not be challenged by filing a case in a decided matter.

c. **Miscellaneous Application 68 of 2021 in Original Application 121 of 2014, Principal Bench filed by the High Court of Himachal Pradesh** Oct 8, 2021 ④

This case concerned yet another application seeking permission to construct in an area where the Tribunal had previously strictly regulated construction due to the extreme stress on the ecology of Shimla, H.P. The Tribunal, whilst taking note of the highest priority that expansion of the High Court complex entails, refused to permit any expansion, citing the 2017 judgment. The Tribunal emphasized on the various directions in that judgment, with particular reference to the complete embargo on any new construction in the core and forest areas of the city, even if that construction was of an 'institutional' nature (Directions II, XI, and XVI). Of note was the weight the Tribunal placed on a report of the Comptroller and Auditor General of India on regulation of constructions in hill areas of H.P. It also noted that a construction cannot be permitted even on an exceptional basis if it impacted public safety and degree of ecological vulnerability of Shimla.

d. **Miscellaneous Applications 59 and 60 of 2021 in Original Application 121 of 2014 filed by Pushpa Bragta and the State of Himachal Pradesh** Sep 13, 2021 ③

Similar to the application seeking construction of a parking lot, the petitioners sought construction in existing structures in a restricted area under the 2017 judgment. The structures sought to be

constructed included a lift within a building for purposes of accessibility, a ramp, and a multi story parking lot in Shimla.

On coming across the issue of parties seeking permits to construct in an area for which the Tribunal had already issued binding restrictive directions again, it sought to clarify the law with respect to seeking orders in a decided case. Such orders may only correct unintended mistakes, and not delve into matters of modification or re-adjudication on substantive issues and merits. In other words, once the court has given finality to a case via a judicial order, its jurisdiction to make any modifications to the same comes to an end (functus officio[38]) with the exception of clerical/arithmetic errors[39].

e. Miscellaneous Applications 56 - 58 of 2021 in Original Application 121 of 2014 filed by Rail Land Development Authority (RLDA) Aug 31, 2021 ④

This case concerns an application made by the Rail Land Development Authority seeking construction of a multi level parking lot and hotel in Shimla. The authority had applied considering that the Tribunal, in a past judgment, had imposed stringent restrictions on any construction work in Shimla. Particularly, the Tribunal had prohibited any new construction in any part of the 'core and forest areas' of the city (as demarcated by a development plan). Even outside these areas, the Tribunal

[38] [Latin "having performed his or her office"] (Of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished, Black's Law dictionary, 9th Edition, *See also* SBI v. S.N. Goyal, (2008) 8 SCC 92, at paragraphs 26 and 27.

[39] Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169 at paragraphs 9 and 10.

directed that construction would strictly have to be in accordance with planning and EL, and seek permission from specially designated expert committees created by the Tribunal in the judgment. Based on its judgment, the Tribunal concluded that a parking lot and hotel would not be permissible construction. Importantly, the Tribunal noted that often, commercial[40] construction is sought in the garb of public utilities[41], which causes severe damage to the unstable mountain environment of Shimla, as established by various experts. The directions came despite an argument made by the authority that the High Court **("HC")** at Shimla has in fact deemed such construction necessary.

5. **Pramod Kumar Sharma v. Uttarakhand Environment Protection and Pollution Control Board**

 automobile service station, protracted litigation, continuing non-compliance, mandate of PCB, criminal EL

 a. **Pramod Kumar Sharma v. Uttarakhand Environment Protection and Pollution Control Board** Miscellaneous Application 67 of 2022 in Original Application 316 of 2021 Sep 26, 2022 ④

 This case concerns the continuing illegal operation of an automobile service station in Jwalapur, Haridwar. This issue had been reopened in the past for consideration due to the continuing

[40] *See* definition of 'commercial use' under Himachal Pradesh Town and Country Planning Act, 1977.

[41] Indicative of "*hospitals, schools and offices of essential services but would definitely not include commercial, private builders and any such allied buildings*". *See* Yogindra Mohan Sengupta v. Union of India, Original Application 121 of 2014, at paragraph 112.III.

operation of these units despite an undertaking indicating otherwise by the PCB.

The Tribunal had then expressed its disapproval of the way the PCB let the units operate despite clear findings of violation of the law. The Tribunal also noted the continuing discrepancies between these clear findings and oral statements made by the Member Secretary of the PCB that the unit was allowed to continue after the stoppage of the water and electricity connection.

In the face of these facts which suggested collusion between the unit and the Board, the Tribunal directed the CS of U.K to look into the conduct of the Member Secretary of the Board and ensure that important positions are manned by people who are "above board" in dealing with the Tribunal.

The petitioner now approached the Tribunal seeking further directions for imprisonment of the defaulter as the unit in question had been de-sealed. The Tribunal directed the petitioner to approach the concerned authorities since direction had already been given earlier to the CS to ensure compliance and if thereafter, a cause of action still survives, to take appropriate remedies in accordance with law. The Tribunal noted that the remedy of trial for the purpose of deciding on imprisonment was not available with it but with the trial magistrate.

b. **Pramod Kumar Sharma v. Uttarakhand Environment Protection & Pollution Control Board, Original Application 316 of 2021** May 18, 2022

This case concerns the continuing illegal operation of an automobile service station in Jwalapur, Haridwar. This issue was reopened for consideration due to the continuing operation of these units despite an undertaking indicating otherwise by the PCB. The Tribunal expressed its disapproval of the way the PCB let the units operate despite clear findings of violation of the law. The Tribunal also noted the continuing discrepancies between these clear findings and oral statements made by the Member Secretary of the PCB that the unit was allowed to continue after the stoppage of the water and electricity connection. In the face of these facts which suggested collusion between the unit and the Board, the Tribunal directed the CS of U.K to look into the conduct of the Member Secretary of the Board and ensure that important positions are manned by people who are 'above board' in dealing with the Tribunal.

6. P **Court on its own Motion v. State of Himachal Pradesh**

carrying capacity, parking, climate change, glaciers, air pollution, fragile ecosystem, taxi operations, multiple fora, protracted litigation, multiple agencies, tourism, tunneling, vehicle permits

a. **Court on its own Motion v. State of Himachal Pradesh 2023 SCC OnLine NGT 146** Apr 25, 2023 ③

In this case, an application has been filed for modification of the Tribunal's orders dated 9.5.2016 and 30.8.2017, whereby the

Tribunal restricted the number of vehicles on the road from Manali to Rohtang pass in H.P, citing adverse impacts on glaciers, air quality, climate change, and fragile ecosystems.

Before the present case, the matter had been dealt with by the H.P HC concerning the pollution and environmental damage caused by 4000 – 5000 vehicles traveling from Manali to Rohtang Pass daily. The HC directed the CS to propose a control mechanism. The case remained pending for three years until it was transferred to the Tribunal for further consideration in 2013.

A report from National Environmental Engineering Research Institute **("NEERI")**, Nagpur, was taken during the proceedings, and regulatory directions were issued to restrict traffic movement. The Tribunal noted that heavy unregulated tourism in Manali, a major tourist destination in the northwestern Himalayas, is causing environmental degradation.

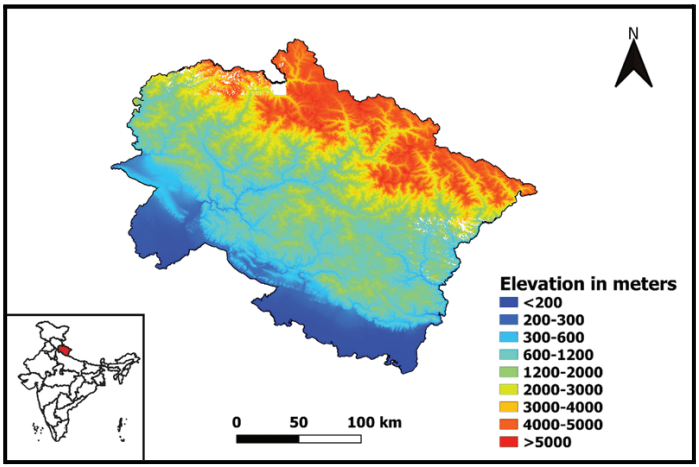
The present application for modification sought increased parking spaces at Gulaba, Marhi, and Rohtang pass due to Atal Tunnel completion and inadequate vehicle permits due to increased tourism activities.

The Tribunal found that carrying capacity in the area did not allow relaxation, and favorable air quality data does not support the sustainability of increased vehicle use. The opening of the Atal Tunnel or parking space did not change the situation. Accordingly, the tribunal dismissed the case.

b. Court on its Own Motion v. State of Himachal Pradesh Original Application 389 of 2018 Dec 22, 2021 ③

The issue for consideration is the remedial steps for maintaining ecology in the area of Manali and Rohtang Pass in H.P. In the light of the previous directions by the tribunal regarding the development of solid waste management facility at Manali, Construction of Eco-friendly markets at Marhi, Upgradation of existing Sewage Treatment plants, establishment of electric buses, installation of weigh in motion, keeping a check on vehicular emission, the Tribunal was in the view that the authorities should continue to monitor the remedial steps for maintaining the ecology in Manali and Rohtang Pass in H.P. It reiterated that a constant vigil is required by ground level authorities in addition to supervision of and coordination with higher level authorities to ensure protection of the ecology.

State of Uttarakhand



Overview

With a total of 63 cases, as compared to 36 for H.P and 13 for JKL, U.K took up a sizable share in environmental litigation in the western Himalayas. The sheer numbers (more than HP and JKL combined), along with complexity of litigation[42], nature of terrain[43], inefficient functioning of executive authorities[44], developmental priorities[45] and religious significance of the state[46] are some of the reasons that it has had such an important role in the development of Himalayan

[42] *See,* for instance, Roshan Joshi v. State of Uttarakhand Original Application 138 of 2022, Dr. Bharat Jhunjhunwala v. Union of India 2022 SCC OnLine NGT 184, Manoj Mishra v. Union of India Appeal 35 of 2021, Vimal Bhai v. State of Uttarakhand Appeal 65 of 2013, Sanjay Kumar v. Union of India 2022 SCC OnLine NGT 274, Junaid Ayubi v. State of Uttarakhand Original Application 692 of 2023, Deepak Kumar v. State of Uttarakhand Appeal 39 of 2022 with Original Application 702 of 2022, Urvashi Shobhna Kachari v. Union of India Original Application 561 of 2022, Mandakini Badh Prabhavit Samiti v. L & T Uttaranchal Hydropower Ltd. Original Application 485 of 2017, Medical Pollution Control Committee v. State of Uttarakhand 2023 SCC OnLine NGT 76 and Jaswinder Singh v. State of Uttarakhand Original Application 172 of 2022.

[43] For instance, the Tribunal considered the validity of four hydroelectric projects namely Vishnugad Pipalkoti, Lakhwar, Alaknanda and Singoli Bhatwari, falling on various rivers in the Ganga river basin including the Alaknanda. Each of these projects is located in earthquake and flood prone terrain.

[44] *See*, for instance, Bachhidhar v. State of Uttarakhand Original Application 264 of 2021 and Pramod Kumar Sharma v. Uttarakhand Environment Protection and Pollution Control Board Miscellaneous Application 67 of 2022 in Original Application 316 of 2021.

[45] The Tribunal refused to interfere with permits granted to each of the four projects mentioned in footnote 2, going as far as stating as follows in the case of Manoj Mishra v. Union of India Appeal 35 of 2021, order dated 19th September, 2022:

"In view of independent and thorough appraisal of all relevant environmental issues, we are satisfied that the project is in national interest and viable, subject to suggested safeguards."

[46] *See*, for instance, International Council for Culture and Languages Foundation v. District Magistrate & Collector, Chamoli Original Application 272 of 2023 and Urvashi Shobhna Kachari v. Union of India Original Application 561 of 2022.

environmental law **("HEL")**. We will now briefly deal with some of these (interconnected) factors.

The duration of litigation, number of executive agencies and judicial fora involved, and the "hard" nature of issues[47] involved contributed to the **complexity** of litigation. For instance, the Tribunal found itself dealing with rampant stone, sand and mineral mining in a highly regulated[48] ESZ, called Doon valley. The state effectively incentivised[49] such activity by reducing the level of scrutiny applicable for mining, by amending its mining policies, relying on a precedent set by the Central Pollution Control Board[50] **("CPCB")**. Adding to the dimension of complexity is the protracted nature of litigation around the region, which began more than 40 years ago[51] in the early 80s.

The **terrain** of the state is as fragile as it is coveted, and a primary contributor to the complexity of litigation observed. Its rivers of the upper Ganga basin including the Bhagirathi, Mandakini and Alaknanda[52] (all three forming subject matter of litigation before the Tribunal) are today sites of large hydroelectric projects, highways,

[47] Elizabeth Fisher, Environmental Law as Hot Law, 25 J. ENVTL. L. 347 (2013).

[48] *See* Junaid Ayubi v. State of Uttarakhand Original Application 692 of 2023 and Deepak Kumar v. State of Haryana, (2012) 4 SCC 629, Deepak Kumar v. State of Uttarakhand Appeal 39 of 2022 with Original Application 702 of 2022.

[49] For recent reportage on the UK government's push for mining, see "As CM lobbied, Centre went against rules, courts to allow river mining in Uttarakhand", by Tapasya and Aggam Walia for Reporters Collective, available here.

[50] CPCB directions dated 7.3.2016 and 30.4.2020.

[51] 1989 Supp (1) SCC 504 at page 507.

[52] Bhadwal, S., Ghosh, S., Gorti, G., Govindan, M., Mohan, D., Singh, P., Singh, S., Yogya, Y. (2017) The Upper Ganga Basin – Will drying springs and rising floods affect agriculture? HI-AWARE Working Paper 8. Kathmandu: HI-AWARE.

pilgrimages and dumping of muck, effluents & solid waste. These are also rivers that have the potential of wreaking untold destruction when in spate, as we saw in the 2013 Kedarnath disaster[53]. Its protected areas **("PA")** such as Rajaji and Corbett National Parks[54] are today surrounded and crisscrossed by hotels, industries and mines. This terrain is quite literally generative of nature-human conflict, and in turn, litigation. This is due to its high degree of vulnerability to floods, cloudbursts, land and mudslides and earthquakes, often all unfolding in unison in a region that is being relentlessly developed across the board.

Executive authorities, such as the PCBs, are often the first resort of citizens in the face of such problems. However, this past year shed light on their "collusion" with defaulting entities and intentionally "misleading" the Tribunal in proceedings involving serious environmental issues[55].

Multiple and interlinked ongoing **developmental projects** including highways and (all) contentious hydroelectric projects were given a go ahead or not scrutinized by the Tribunal as a rule of thumb. In one case, the Tribunal explicitly cited "national interest" whilst permitting a long-stalled hydroelectric project[56].

[53] *See* article titled "Remembering 2013 Uttarakhand Floods" by Soma Basu, Jyotsna Singh, Kumar Sambhav Shrivastava, Ankur Paliwal and Anupam Chakravartty for Down to Earth, available here.

[54] These two parks alone accounted for almost one tenth (6) of the litigation observed in our tracking efforts.

[55] See Pramod Kumar Sharma v. Uttarakhand Environment Protection and Pollution Control Board Miscellaneous Application 67 of 2022 in Original Application 316 of 2021 and Bachhidhar v. State of Uttarakhand Original Application 264 of 2021.

[56] Manoj Mishra v. Union of India Appeal 35 of 2021. *See also* Conservation Action Trust v. The Ministry of Environment, Forest and Climate Change, Appeal 29 of 2022/Eastern Zone.

These factors of **complexity**, difficult **terrain**, **inefficiency** in functioning of executive authorities, and **developmental priorities** are common across the western Himalayan region, but particularly exacerbated in UK. Home to the Char Dhams of Kedarnath, Badrinath, Yamunotri and Gangotri[57], the state attracts an immense pilgrim and tourist inflow each year, leading to serious issues such as animal cruelty, solid waste mismanagement, construction of temporary infrastructure in floodplains, noise pollution and the like. The **religious significance** of the state operates in tandem with the aforementioned issues to complicate environmental issues that are already hard to resolve.

However, at the same time, it is this complexity that has given rise to significant jurisprudential advances when it comes to HEL.

The Tribunal has used various kinds of legal reasoning, from giving legislative color to executive guidelines to employing the use of fundamental rights to fill key regulatory "fissures" or "gaps" created by complex fact situations[58]. The disciplining force of the Tribunal's decisions has meant that executive authorities have been pulled up to explain their conduct and investigated by the bureaucracy at its highest levels. The Tribunal has also had to operate in a legal-environmental terrain surveilled closely by the SC and U.K HC, hence making much of the reasoning you will come across more carefully considered to avoid upsetting judicial hierarchies[59].

[57] *See* Urvashi Shobhna Kachari v. Union of India Original Application 561 of 2022 and Vimal Bhai v. State of Uttarakhand Appeal 65 of 2013.

[58] *See* Roshan Joshi v. State of Uttarakhand Original Application 138 of 2022 and Sanjay Kumar v. Union of India 2022 SCC OnLine NGT 274.

[59] *See* Rajat Narayan v. Union of India Original Application 542 of 2022.

India has set ambitious targets under the Paris accords and climate change now features in important legislation such as the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980. However, the MoEFCC continues to deny existing science which attributes climate change to anthropogenic (human) factors for want of empirically verified studies over and above mere mathematical modeling.

In the past, the Tribunal has dismissed petitions raising the issue of climate concerns not being adequately incorporated under the legislative scheme concerning environmental impact assessment. Although not explicitly mentioned in its order, one of the barriers when dealing with climate change has been its lack of **visibility**, and hence verifiability. In this context, the Tribunal's decision in the *Sanjay Kumar* case[60], where it directed the state of UK to protect all streams irrespective of their visibility is important. The Tribunal clarified that merely because a stream is seasonal does not mean that mining can take place in close proximity to its channel.

Arguably, such jurisprudence is moving away from definitionally rigid formulations of the various forms natural resources and pollution can take towards logic that is more amenable to a phenomenon such as climate change, that is not evident in day to day life.

[60] *See* Sanjay Kumar v. Union of India 2022 SCC OnLine NGT 274. It may interest the reader to note that climate change was mentioned and indeed used by the Tribunal to protect such rivers# and that perhaps such a novel decision couldn't have been passed but for four decades of litigation and a complicated fact scenario presented by the region in question, the Doon valley.

In another case the Tribunal ruled that the MoEFCC and Central Pollution Control Board ("CPCB") must regulate air quality in public spaces irrespective of whether it is indoors or outdoors.

The Himalayan region, with its inherent complexities and unpredictability, will undoubtedly play an important role in driving this shift.

Month of July, 2022 (6)

1. **Vasu Singh v. State of Uttarakhand** 2022 SCC OnLine NGT 159 Jul 8, 2022 ③

 commercial activity, encroachment[61], PAs, wildlife law, solid waste, public health, religious place

 This case concerns the dumping of toxic and other solid waste, and encroachment near a temple complex in Rajaji Tiger Reserve, U.K. The petitioner alleged that this is impacting local biodiversity. The issue of encroachment inside the park was also raised.

 A report filed by an expert committee clarified that remedial action[62] was taken, including steps for maintenance of hygiene and cleanliness, disposal of the waste, creating awareness, compliance of provisions of the Wildlife Protection Act in prohibiting/regulating commercial activities and removing[63] encroachments.

 On the issue of encroachment, the Tribunal directed that further action may be taken by the authorities to ensure removal of structures in question. The Tribunal also emphasized the need to continue taking remedial measures.

[61] An infringement of another's rights; An interference with or intrusion into another's property, Black's Law dictionary, 11th Edition.

[62] An action intended to bring about to restore long-term environmental quality, *See also remedy* - providing the means of obtaining redress; intended to correct, remove or lessen a wrong, fault, or defect; Of, relating to, or involving a means of enforcing an existing substantive right, Black's Law dictionary, 11th Edition.

[63] *See removal* - The transfer or moving of a person or thing from one location, position, or residence to another, Black's Law dictionary, 11th Edition.

2. ⑤ **Gulab Rai v. Union of India**

grain based ethanol distillery, condonation of delay in filing Appeal, incorrect information disclosure, challenge to environmental clearance ("EC"), fruit bearing trees, agricultural land, effluents, groundwater, emissions, fly ash, expert appraisal[64] Committee, approved fuels, zero liquid discharge, review of order, grounds of review

a. **Gulab Rai v. Union of India** Appeal 30 of 2022 Jul 14, 2022

This case concerns an appeal against a permit granted to a grain based ethanol distillery at Surpur, Nainital, U.K.

According to the petitioner, incorrect information with respect to distance from a forest had been provided in the application seeking permit. Further, the area in question is covered by fruit bearing trees which will be adversely[65] affected by the air pollution caused by the industry. The petitioner also raised issues of fly ash, gas, soil and effluent based pollution which may be caused by the industry, if permitted.

The Tribunal found the appraisal of the application made by the industry to be adequate in terms of measures suggested, including

[64] *See* appraisal - The determination of what constitutes a fair price for something or how its condition can be fairly stated; the act of assessing the worth, value, or condition of something; the report of such a determination; a statement or opinion judging the worth, value, or condition of something, Black's Law dictionary, 11th Edition.

[65] *See* Disparate impact - The adverse effect of a facially neutral practice that nonetheless discriminates against persons because of their race, sex, national origin, age or disability and that is not justified by business necessity. Discriminatory intent is irrelevant in a disparate-impact claim - also termed *adverse impact*, Black's Law dictionary, 11th Edition.

green belt, zero liquid discharge[66] and an environment management plan. The Tribunal emphasized on the need to recharge groundwater through rainwater and not waste water generated by the industry. The Tribunal also found the appraisal to be in compliance with the U.K PCB office order in connection with approved fuels.

Accordingly, the Tribunal disposed of the appeal without interfering with grant of the permit whilst reserving the right of the petitioner to raise issues in case of environmental violations in the future operation of the project.

Related disclosure: Department of Food and Public Distribution List of Ethanol Proposals accorded In-principle/Conditional approval under scheme notified on 22.4.2022 (Status as on 19.05.2023)

b. **Gulab Rai v. Union of India** 2022 SCC OnLine NGT 191 Aug 23, 2022

The petitioner moved the Tribunal for review of order dated 14.7.22 on the ground that they had no opportunity to be present before the Tribunal on the last occasion to point out inadequacies with the process leading up to the grant of the permit.

The Tribunal refused to review its order considering that the petitioner had ample opportunity to make submissions last time and even on merits, there was no infirmity shown in the permit.

[66] *See* CPCB directions to Chairman of Uttarakhand PCB dated 24.2.2015 available here.

3. **M/s Surendra Motors v. Uttarakhand Environment Protection and Pollution Control Board** 2022 SCC OnLine NGT 171 Jul 18, 2022 ③

challenge to sealing and compensation orders, incorrect remedy, need for reason giving in choosing alternative remedy

This case has been filed by an automobile shop challenging the closure and compensation orders issued by the U.K PCB against it.

The Tribunal rejected the petition since a statutory appeal as provided for under Section 16 of the NGT Act, 2010 was not filed, and no reason has been given for avoiding filing such an appeal against the closure orders.

Connected case: Pramod Kumar Sharma v. Uttarakhand Environment Protection and Pollution Control Board, M.A 67 of 2022 in O.A 316 of 2021[67]

4. P **Bachhidhar v. State of Uttarakhand** Original Application 264 of 2021 Jul 19, 2022 ③

stone crushing, air, water and noise pollution, groundwater extraction, contradictory reports filed by PCB, continuing violation of EL, breach of mandate of PCB, oversight of PCBs for protecting environment, misleading[68] the Tribunal

This case concerns operation of stone crushers causing air, water and noise pollution and depletion of groundwater in Betalghat Block, Village Ratoda, District Nainital in the Kosi watershed.

[67] Listed separately considering a different case title.

[68] (Of an instruction, direction, etc.) delusive; calculated to be misunderstood, Black's Law dictionary, 9th Edition.

When the case was last considered, in light of contradictory reports submitted by the PCB, the Tribunal had sought the personal presence of the Member Secretary of the PCB. The Tribunal had also sought a duly verified and factual report.

The PCB, in a subsequent report clarified that there were shortcomings in the earlier reports and that a show cause notice was issued in response. It further stated that though the units in question were complying, environmental compensation for the period of non compliance was duly levied.

The Tribunal found these clarifications to be "*equally contradictory and unsatisfactory*". It noted that the contradiction with respect to violations by stone crushers still subsisted with two reports of the PCB pointing at two different situations - one stating that there were violations and the other stating otherwise. While noting that the situation was unfortunate, the Tribunal clarified that the situation where officers of the PCB did not act according to their mandate had to be remedied at the highest level of the state administration. The Tribunal sought legal action against erring officers.

Further, the Tribunal sought a report from the CS of U.K within three months, to be placed before it if the need arises. The Tribunal also sought the revamping of the PCB from the CS which it found had become inevitable for protecting the environment.

See also: News article covering U.K Chief Minister request to the Union Minister for Environment, Forest and Climate Change to extend mining permits in four rivers including Kosi.

5. **Rajat Narayan v. Union of India** Original Application 542 of 2022 Jul 26, 2022 ②

road construction, tree felling, climate change, road capacity, real estate lobby, transplantation, parallel proceedings before HC, development in eco fragile zone

This case concerns the felling of approximately 2500 trees for the purpose of widening of the 14 km long Sahastradhara road in Dehradun at the cost of Rupees 77 crores. According to the petitioner, this will lead to drying up of water springs and loss of majority of forests in the city and climatic changes like frequent landslides, floods, cloudbursts, less winters, extreme heat waves.

The petitioner sought stoppage of any felling and arrest of people protesting such expansion. The petitioner alleges that the felling of trees is being done to benefit builders that have purchased plots close to the road.

The petitioner also referred to an order of the U.K HC whereby such felling was permitted. The HC partially permitted felling of 1006 eucalyptus trees and directed for transplantation of the remaining indigenous and fruit bearing trees. Further, the HC required the government to plant appropriate trees along the road, maintain them over a period of 5 years and submit reports every six months.

The Tribunal refused to intervene in the case since the issues were already before the HC and disposed of the case with liberty to the petitioner to approach that court for seeking remedies.

Connected case: Ashish Kumar Garg v. State of Uttarakhand, 2022 SCC OnLine Utt 1074

See also: News coverage on the project

6. P **Roshan Joshi v. State of Uttarakhand** Original Application 138 of 2022 Jul 27, 2022 ③

siting criteria for petrol pumps, Not in my backyard movement ("NIMBY[69]"), judicial policy making, retrospective[70] applicability of siting guidelines, retrospective applicability of executive instruments meant to protect the environment, limitation[71], right to life, right to environment, legislative color of non-statutory guidelines, sustainable development, precautionary principle, contradictory orders of different benches of Tribunal

This case concerns the establishment of three petrol pumps in violation of siting criteria of the CPCB at Mauja Raipur, Ranjhawala, Raipur, and Fountain Chowk and Dobhal Chowk, Dharampur-Nehrugram Road, Dehradun, U.K. The criteria mandates a minimum distance of 50 meters to be maintained by petrol pumps from residential areas. The criteria itself was formulated by the CPCB in response to a 2019 order of the Tribunal.

On fresh consideration, the petrol pump company i.e. BPCL, urged that the January 2020 CPCB criteria would not apply to its case since those were issued much after it applied for an NOC for its operations. The Tribunal however noted that the NOC itself was

[69] NIMBY, also spelled Nimby, in full Not in My Backyard or Not in My Backyard Phenomenon, a colloquialism signifying one's opposition to the locating of something considered undesirable in one's neighborhood, Britannica.

[70] *See* Retroactive: (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. Also termed retrospective, Black's Law dictionary, 9th Edition.

[71] A statutory period after which a lawsuit or prosecution cannot be brought to court, Black's Law dictionary, 11th Edition.

granted in August, 2020 by the DM, after the publication of the criteria. BPCL relied on another order of the Southern Bench of the Tribunal where it was held that once the process for obtaining NOC has started, subsequent amended guidelines would not apply to petrol pumps. BPCL also raised concerns of the application being barred by limitation prescribed under Section 14(3) of the NGT Act, 2010. To this, the petitioner stated that the criteria was in force at the time the petrol pump was being set up.

As regards the issue of limitation, the Tribunal found the petition to be within the prescribed limitation under Section 15(3) of the NGT Act, 2010. The Tribunal however set aside the view taken by the Southern Bench centering its analysis on the primacy of the right to environment as part of the fundamental right to life under Article 21 of the Constitution. The Tribunal relied on the SC judgment in *Tejinder Jolly*, where it held that subsequent regulatory regime applicable would be binding even on stone crushers established before the regime came into force.

Accordingly the Tribunal held that the CPCB guidelines would be applicable irrespective of whether the process of obtaining permits for the petrol pump began prior to the issuance of such guidelines. The Tribunal held that even such non-statutory guidelines meant to enforce the sustainable development and precautionary principles would be enforceable as is the legislative mandate under Section 20 of the NGT Act, 2010. Although the report of the DM, Dehradun found that no construction had taken place on site, the Tribunal nevertheless clarified that the January, 2020 guidelines would be strictly applicable and directed the statutory authorities to take further action in accordance with law.

Month of August, 2022 (2)

7. **Vipin Nayyar v. Union of India**

 construction of toilets on floodplain, sewage discharge, continuing violations, protracted litigation, failure to execute order, appropriate remedy, criminal EL

 a. **Vipin Nayyar v. Union of India** 2022 SCC OnLine NGT 186 Aug 10, 2022 ②

 This case concerns construction of toilets in the floodplain of river Ganga in Rishikesh, U.K.

 The petitioner had approached the Tribunal on multiple previous occasions[72] alleging continuing violations in the nature of dumping of waste in the river and lack of sewage treatment. In continuation, the petitioner filed this case seeking criminal action against the government for continuing violation of its orders.

 On the last occasion, the Tribunal had directed the CS of U.K to take appropriate measures in light of its detailed directions passed in January, 2022, permitting the toilets as a one time interim arrangements whilst appropriate measures to relocate the same were taken by the Government.

 The Tribunal refused to intervene stating that offenses under the act are to be enforced by criminal courts at the local level under Section 30 of the NGT Act, and since an application had not been filed

[72] *See* orders dated 3rd January, 2022; 6th May, 2022; 18th May, 2022 and 5th July, 2022.

under that section, the petitioner's case was not maintainable[73] before the Tribunal.

b. **Vipin Nayyar v. Union of India** 2022 SCC OnLine NGT 215 Sep 16, 2022 ③

According to the petitioner, the violations still continue. The Tribunal directed that its previous order concerning a prohibition on any permanent construction be sent to the District Judge to be duly transferred to the concerned Civil court at the district level and be executed.

[73] *See* maintenance - The continuation of something, such as a lawsuit, Black's Law dictionary, 11th Edition.



Vishnugad-Pipalkoti Hydroelectric project © Sunny Gautam

8. P **Dr. Bharat Jhunjhunwala v. Union of India**

challenge to hydroelectric project, delay in completion, protracted litigation, public consultation[74], blasting, erosion, water pollution, change in scope of project, cost benefit analyses[75], seismic zone, e-flow, monitoring mechanism, environment impact assessment process, high altitude zone, unstable slopes, review jurisdiction, rehearing

a. **Dr. Bharat Jhunjhunwala v. Union of India** 2022 SCC OnLine NGT 184 Aug 16, 2022 ③

This case concerns a challenge to permit granted by MoEFCC for purposes of construction of the Vishnugad-Pipalkoti Hydro-electric Project of 444 MW over an area of 141.568 hectares by M/s THDC India Limited located at Village Haat, Tehsil Joshimath, District Chamoli, U.K.

The petitioner raised various issues with the permit based on a history of continuing extensions granted for the purposes of construction of the project, which has not been completed despite immense delays. According to the petitioner, a permit was initially granted for the project in 2007 for 10 years. Thereafter, a three year extension was granted, and the permit has now been extended up to August, 2021.

[74] The act of asking the advice or opinion of someone; A meeting in which parties consult or confer, Black's Law dictionary, 11th Edition.

[75] (1963) An analytical technique that weighs the costs of a proposed decision, holding, or project against the expected advantages, economic or otherwise; a way of calculating the methods or plans that will bring the most advantages for the smallest cost, esp. in business, Black's Law dictionary, 11th Edition.

The petitioner alleged that the cost benefit analysis is in favor of abandoning the project, that dispensing the public hearing for the project was illegal since it hasn't even been 50 percent completed (the minimum threshold for exemption as per procedure), that the expert committee of the MoEFCC has failed to consider critical issues concerning soil erosion, blasting, decline in water quality, loss of aesthetic values and loss of aquatic biodiversity. The petitioner also alleged that there was complete change in scope of the project over the past decade.

The Tribunal refused to interfere with the permit, instead stipulating additional safeguard measures. The Tribunal justified its decision on the basis of immense public spending, the need for rural electrification and completion of more than 50 percent of the project.

The Tribunal also found that fresh appraisal had been conducted with the help of rapid EIA and presentations of the project proponent, significant environmental issues of soil erosion, blasting, water quality, aesthetic values and loss of aquatic biodiversity had been addressed. Further, concern of obstructing the movement of fisheries which may adversely affect the local communities had also been taken into account. Impact on habitations in upstream and downstream areas by flooding, landslides etc. had also been considered.

As per the Tribunal, the project is not liable to be interfered with except for laying down safeguards and conditions in execution of the project.

The Tribunal however, noted that a strenuous monitoring[76] mechanism was required, especially for areas prone to landslides and to prevent damage to the dam and other infrastructure. To this end, the Tribunal sought that e-flow requirements be strictly adhered to as per its past orders, capital cost invested in environment management plan be increased to 10 percent of the total project cost, and that the progress of the project be monitored by a 6 member team comprising CS, U.K, State Disaster Management Authority, MoEFCC, National Mission for Clean Ganga **("NMCG")**, G.B. Pant National Institute of Himalayan Environment, Almora, State PCB and Director of Coldwater Fisheries Research, ICAR, Bhimtal, District Nainital, U.K.

The Tribunal directed the team to meet no later than three months from its order date and suggest appropriate measures arrived at in a consultative manner. The Tribunal directed that the minutes of the meeting of the team be placed on the website of the project proponent.

See also: News article on World Bank investigation into the project, World Bank proceedings of investigation

b. Dr. Bharat Jhunjhunwala v. Union of India 2022 SCC OnLine NGT 221 Sep 22, 2022 ③

The project proponent filed a review application urging the Tribunal to review its earlier decision with respect to the increase in the EMP budget with the grievance that increase of EMP to 10% of the project cost will have cascading effect on total project cost.

[76] To watch and check a situation carefully for a period of time in order to discover something about it, Cambridge dictionary.

The Tribunal found that contentions raised were beyond the scope of review application and are in the realm of rehearing[77] on merits which cannot be permitted and accordingly dismissed the review petition.

[77] A court's second or subsequent hearing of a case, a motion, or an appeal, usually to consider an alleged omission in the court's judgment or opinion, Black's Law dictionary, 11th Edition.

9. P **Manoj Mishra v. Union of India** Appeal 35 of 2021 Sep 19, 2022 ③

hydroelectric project, challenge to permit, environment impact assessment, seismic activity, disaster management plan, muck disposal plan, forest land, cumulative impact assessment, Yamuna river basin, fisheries, extension of EC, protracted litigation, appraisal by MoEFCC

The appeal was brought against environmental clearance dated 2.02.2021 granted for the Lakhwar Multipurpose Project in Tehri Garhwal District to U.K Jal Vidyut Nigam Ltd. The petitioner raised multiple contentions with respect to the clearance granted including lack of disaster and muck disposal planning, loss of biodiversity on clearing large area of forest land, and lack of a publicly available cumulative impact assessment[78] study for the Yamuna river basin.

When the case was last heard, the Tribunal directed the formation of a committee made up of domain experts that would help it make an informed decision about the viability of the project and the conditions subject to which the same may be allowed.

The committee suggested various specific measures whilst noting that:

"The total number of hydroelectric projects (operational, under construction and proposed) to be considered in the River Basin Study (RBS) shall be

[78] *See* T. Muruganandam v. Ministry of Environment and Forests, 2014 SCC OnLine NGT 7161, See also IL&FS Tamil Nadu Power Company Limited v. T. Muruganandam, 2023 SCC OnLine SC 157.

finalized and frozen in consultation with both the State governments. No other HEP's shall be considered once the RBS has been finalized.

In this regard, ICFRE, Dehradun has submitted a detailed proposal to the MoEF & CC. After finalization of the CLA study by MoEF&CC, the study report of Yamuna river basin shall be uploaded in the public domain and UJVN Limited shall abide by the directions and recommendations."

Since the petitioner filed no objection to the report, the Tribunal accepted the same and directed for enforcement of its recommendations and for provision of additional finances which would be needed. The Tribunal recorded the project proponents' undertakings with respect to comprehensive seismological monitoring and fishery development.

The final recommendations made included:

1. Comprehensive plan to manage impacts on the Mahaseer, Snow Trout and other indigenous group of fishes,
2. Maintenance of minimum environmental flow as per U.K government guidelines dated 5.6.2018[79] (see also NMCG notification on ecological flow dated 9.10.2018,
3. Proper monitoring during implementation phase of the Catchment Area Treatment Plan,
4. Proper implementation of the Rehabilitation and Redevelopment and Local Area Development Plans,
5. Increased budget provision for Biodiversity Conservation and Management Plan,
6. Installation of a permanent network of 5 seismological observatories,

[79] *See also* NMCG notification on ecological flow dated 9.10.2018.

7. Publishing of study on Yamuna river basin
8. Proper monitoring of muck dumping plan

However, the Tribunal refused to interfere with the permit granted to the project on grounds of "national interest" and "independent and thorough" appraisal of the project.

See also: Yamuna Basin Atlas dated December, 2021 published by National Mission for Clean Ganga

10. **Mohini Sharma v. State of Uttarakhand Original Application 377 of 2022 Sep 21, 2022** ②

iron workshop, public health, NIMBY, criminal EL

This case concerns noise pollution caused by the operation of an iron workshop in a residential area in Jwalapur in front of the house of the petitioner causing serious health hazards and other local residents. According to the petitioner, the representations were made to the concerned authorities but no action has been taken on the same.

According to an expert committee report filed, a suit was filed in the Municipal Magistrate Court against Mr. Ajay Kumar, Iron Workshop Mohalla, New Dhirawali, BHEL Road, Jwalapur, Haridwar under Section 133 (1) of the Cr.P.C (nuisance) and proceedings were ongoing in that case.

The Tribunal found that since the proceedings had already been initiated under Section 133 (1) of the Code of Criminal Procedure, 1973, no further intervention was warranted.

However, the Tribunal directed the DM of Haridwar to forward the action taken report on conclusion of the proceedings to the registrar of the Tribunal, and further directed the registrar to place the case before the Tribunal if required.

11. **Pramod Kumar Sharma v. Uttarakhand Environment Protection and Pollution Control Board** Miscellaneous Application 67 of 2022 in Original Application 316 of 2021 Sep 26, 2022 ④

automobile service station, protracted litigation, continuing non-compliance, mandate of PCB, criminal EL

This case concerns the continuing illegal operation of an automobile service station in Jwalapur, Haridwar. This issue had been reopened in the past for consideration due to the continuing operation of these units despite an undertaking indicating otherwise by the PCB.

The Tribunal had then expressed its disapproval of the way the PCB let the units operate despite clear findings of violation of the law. The Tribunal also noted the continuing discrepancies between these clear findings and oral statements made by the Member Secretary of the PCB that the unit was allowed to continue after the stoppage of the water and electricity connection.

In the face of these facts which suggested collusion between the unit and the Board, the Tribunal directed the CS of U.K to look into the conduct of the Member Secretary of the Board and ensure that important positions are manned by people who are "above board" in dealing with the Tribunal.

The petitioner now approached the Tribunal seeking further directions for imprisonment of the defaulter as the unit in question had been de-sealed. The Tribunal directed the petitioner to approach the concerned authorities since direction had already been given earlier to the CS to ensure compliance and if thereafter, a cause of action still survives, to take appropriate remedies in accordance with law. The Tribunal noted that the remedy of trial for the purpose of deciding on imprisonment was not available with it but with the trial magistrate.

Month of October, 2022 (2)

12. P **Harish Singh Bisht v. State of Uttarakhand** Original Application 361 of 2021 Oct 18, 2022 ④

solid waste dumping, river, failure of statutory duty by municipal corporation ("MC"), polluter pays principle, eco fragile area, storage of legacy waste[80], processing of waste in Himalayan region

This case concerns violation of Solid Waste Management Rules, 2016 in Chamoli District, Uttarakhand. According to the petitioner, waste was being dumped into Balkhila river which is tributary of Alaknanda and Ganga river.

According to the report filed by an expert committee, there was unprocessed legacy waste stored at the site which has the potential of mixing with the river water. Apart from accumulated waste, estimated waste generation for Gopeshwar Chamoli is 5 Tons Per Day which is not processed. Thus, adequate capacity for waste processing has not been provided as per mandate of law. Moreover, legacy waste cannot be left unattended in the river catchment area.

The Tribunal directed the Additional CS/Principal Secretary, Urban Development to monitor compliance of the Solid Waste Rules by taking action against the erring officers. Further, the Tribunal directed the MC, Chamoli to deposit a penalty of 10 L with the DM, Chamoli within one month, to be used for restoration purposes within three months. The Tribunal clarified that the polluter pays principle *"also applies when there is palpable failure to perform statutory duties by a public authority."*

[80] *See* CPCB Guidelines for Disposal of Legacy Waste, available here.

Further, emphasizing the ecologically fragile nature of the Himalayas, the Tribunal directed that steps be taken to ensure that the waste generated is processed nearest to the source of generation within the shortest period and that the existing waste is separated from the river by use of "bundh" or barrier.

See also: District Environment Plan, Chamoli

13. **In re: news item published in the Newspaper The Hindu dated 02.10.2022 titled "Over 6,000 trees illegally cut for tiger safari project in Corbett Reserve, says FSI report"** 2022 SCC OnLine NGT 235 Oct 21, 2022 ③

tree felling, tiger safari, PA, suo motu, mandate of committee, interim directions, conflict between government departments

This case concerns illegal felling of 6093 trees in Corbett Tiger Reserve in Kalagarh Tiger Reserve Division in Uttrakhand. It is further stated that the Forest Survey of India (FSI) was asked to assess the status of illegally felled trees.

The Tribunal found that the Forest Department had acknowledged such illegal felling in its communications with the FSI. Accordingly the Tribunal constituted an expert committee to identify the violators and the steps required for restoration of the environment.

The Tribunal directed the committee to submit specific recommendations to the Secretary, MoEFCC within one month and prohibited any progress on the tiger safari project in the interim. The Tribunal directed the MoEFCC to file a report by January, 2023.

See also: Report filed by Principal Secretary dated 12.4.23; The Hindu news report dated 2.10.22, Hindustan Time report dated 14.3.23, subsequent NGT order in the same matter

14. **Naveen Rana v. State of Uttarakhand** Original Application 296 of 2022 Nov 2, 2022 ②

construction, floodplain, clarification on prohibited distance in floodplain zone, public servant as petitioner

The petitioner, a member of Nagar Panchayat, Swarg Aashram (Gharwal) had raised the issue of unlawful construction of shops within the distance of 100 meters from river Ganga by the Swargashram Trust, Rishikesh. According to the petitioner, The vendors have encroached on the bathing ghats and even toilets constructed during Kumbh Mela outside Vanprasth Ashram. The area has become prone to untoward accidents because of use of highly inflammable fuel by the vendors.

According to the response filed on behalf of the DM, Pauri, it was found that land owned by the Swargashram Trust is situated at a distance of 205 meters from the middle of river Ganga and 60 to 65 meters from the edge of river Ganga. The Tribunal found that the same does not fall within the floodplain zone of river Ganga[81].

The construction, being raised by the trust without any map, was stopped by issuance of show cause notices. The Tribunal was informed that the Trust has now submitted an application for approval of its map of construction which is under process with the concerned authority.

On the basis of this information, the Tribunal refused to intervene and disposed of the case.

[81] *See also* 2017 SCC OnLine NGT 1980, Para 414(7).

15. **Deepak Sharma v. State of Uttarakhand** 2022 SCC OnLine NGT 251 Nov 11, 2022 ④

petrol pump, siting criteria, execution, guidelines, district judiciary

This case concerns execution of an earlier order of the Tribunal on the issue of location of petrol pumps in violation of CPCB guidelines. A committee constituted then had recommended that the petrol pump concerned not be set up on the site, in accordance with the guidelines. According to the petitioner, in spite of the decision of the committee that the location of the petrol pump was not compliant with the guidelines, it has been allowed to go ahead.

The Tribunal directed the DM Haridwar to look into the matter and ensure compliance and also for forwarding orders to the District Judge, Haridwar for execution under the NGT Act. It also directed that a copy of its order be forwarded to the project proponents.



The Satopanth and Bhagirath Glaciers are located at the headwaters of the Alaknanda © American Geophysical Union

16. P **Vimal Bhai v. State of Uttarakhand** Appeal 65 of 2013

Nov 30, 2022 ③

hydroelectric project, challenge to forest clearance, stage at which forest clearance can be challenged, protracted litigation, multiple fora, forests, cost benefit analysis, public interest, net present value, Alaknanda & ganga river basins

This case concerns the challenge to Stage II forest clearance[82] (and proceedings leading thereto) for Alaknanda Hydro Electric Project, U.K. The project is for generation of 300 MW of power and involves construction of 18 m high diversion barrage across the Alaknanda river, 3 Km downstream of Badrinath town. The petitioner earlier moved the Tribunal in 2011 to challenge the Stage I clearance however the Tribunal had rejected the challenge in 2012 whilst granting the petitioner liberty to challenge the Stage II clearance (hence this particular challenge).

According to the petitioner, a proper cost benefit analysis has not been undertaken; hence, the permit is not sound. It is not as per the National Forest Policy. According to the State of U.K, the project is in public interest[83] for overall development of the state and for generation of employment and availability of electricity. The project is at a strategic location, close to the China border. Compensatory afforestation and deposit of Net Present Value[84] has

[82] *See* technical FAQs on Forest Clearance published by MoEFCC available here.

[83] The general welfare of a populace considered as warranting recognition and protection; something in which the public as a whole has a stake, especially an interest that justifies government regulation, Black's Law dictionary, 11th Edition.

[84] The quantification of the environmental services provided for the forest area diverted for non-forestry uses, as may be determined by an expert committee

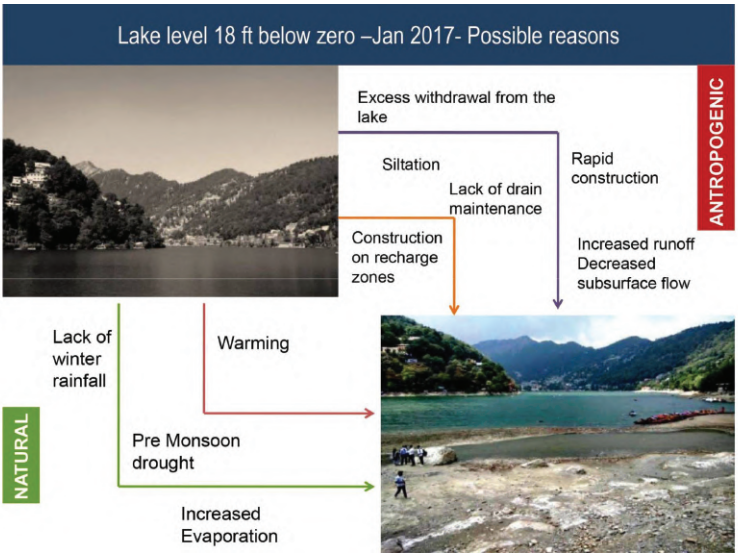
been done. The MoEFCC argued that due appraisal of the project was undertaken prior to grant of permit.

The matter being considered for clarification by the SC and passing of the petitioner came up before the Tribunal. The Tribunal noted that the main issue pertaining to forest clearance permit had already been decided by the SC in a 2013 judgment[85] and allied issues including a contempt petition filed by the petitioners had been dismissed[86] by that court. The Tribunal also took note of the SC intervention as regards the need to undertake detailed assessment of the project prior to issuance of any further permits. Therefore, the Tribunal disposed of this matter without intervening any further considering the prior involvement and due adjudication by a higher court.

appointed by the Central Government from time to time in this regard, Section 2(j), CAMPA Act, 2016.

[85] (2014) 1 SCC 769.

[86] (2016) 12 SCC 455.



Issues facing the Naini lake © Toby Smith

17. P **Friends v. Union of India** Original Application 333 of 2019 Dec 5, 2022 ④

construction on lakebed, protracted litigation, multiple fora, impact of encroachment on lakes

This case concerns illegal constructions in the catchment area of Naini Lake, Nainital.

When the case was last considered, the Tribunal had sought a report from U.K State PCB, DM, Nainital and Secretary, Urban Development with reference to the allegations in the application.

The report clarified that the issue was already pending before the U.K HC. The matter was therefore adjourned till the case[87] before the HC was disposed of.

This matter came up before the Tribunal considering the fact that the case before the HC has been disposed of on 17.08.2020[88], recording assurance of the authorities to take remedial measures.

However, the petitioner submitted that there are illegal constructions in the catchment area of the lake, beyond carrying capacity[89]. Commercial constructions are taking place disregarding the environmental concerns. Recent landslides have happened. According to the petitioner, these issues were not considered by the HC. The Tribunal noted that the petitioner had failed to make the alleged violators party to the case before it.

The Tribunal emphasized that this particular issue had also been taken up by the HC in another case[90] wherein it clarified that:

"All unauthorized construction activities, presently in progress shall stop with immediate effect. Any unauthorized construction which is already there, the Lake Development Authority is given instructions to give notices to the occupants of these unauthorized premises, so that such structures be removed in accordance with law. It is made clear that it was brought to our

[87] (2020) SCC OnLine Utt 1097.

[88] *Id.*

[89] The term 'carrying capacity', refers intrinsically to the notion of limitations of the environment to provide resource support and to assimilate waste for a population and its activities in a given physical setting on a 79 sustainable basis. Normally, carrying capacity constituents of an urban area are supportive carrying capacity and assimilative carrying capacity, NGT judgment dated 16.11.2017 in Yogindra Mohan Sengupta v. Union of India, Original Application 121 of 2014.

[90] Writ Petition (PIL) No. 31 of 2012, Prof. Ajay Singh Rawat v. Union of India.

notice on more than one occasion, and in spite of clear instructions of this Court, unauthorized construction has been permitted around the water body of Sukhatal. In case an unauthorized construction is being carried out, such officers who have permitted these constructions shall be personally responsible, inter alia, for disobeying the orders of this Court."

In light of the fact that the case was still pending before the HC, the Tribunal did not intervene any further and disposed of the matter.

See also: Connected news article on proximate[91] lake bed; Decision of U.K HC in Ajay Rawat case

18. P **Sanjay Kumar v. Union of India** 2022 SCC OnLine NGT 274 Dec 7, 2022 ③

classification of perennial and non-perennial streams[92], connection of environmental protection with visibility of resource, judicial scrutiny of executive policy, stone crushers, multiple fora, *stare decisis*[93] in the context of the NGT, application of legislation and executive order to policy, uniform jurisprudence across NGT benches, flood plains, river morphology, expert opinion, natural justice[94]

[91] The quality, state, or condition of being near in time, place, order, or relation, Black's Law dictionary, 11th Edition.

[92] *See* footnote 3 of order dated 7.12.2022.

[93] To stand by things decided, Black's Law dictionary, 11th Edition.

[94] Justice as defined in a moral, as opposed to legal, sense, Black's Law dictionary, 11th Edition.

This case concerns arbitrary[95] classification of streams into perennial and non-perennial for the purpose of setting up stone crushers, screening plants, etc. According to the petitioner, the mining policy to the extent of such classification violates the principle of 'Sustainable Development' which is to be enforced by the Tribunal under the NGT Act.

According to the State of U.K, the matter is governed by the 2020 Policy issued by the Mineral Development Department to regulate stone crushers and other industries. The siting norms contained in the policy are based on the nature of the rivers - perennial or non perennial. In this case, the minimum distance prescribed for a stone crusher from a perennial river was 500 meters whereas it was 50 meters for a non-perennial river.

The Tribunal found it difficult to accept the rationale of the policy in laying down different distances for siting of such units on the basis of 'perennial' and 'non perennial' based on four reasons:

I. The prohibition under Section 24 of the Water Act against pollution of such streams (as defined under that act) applies to **every** stream – whether perennial or non - perennial. Same reasoning has to apply to siting criteria as need for protection of both types of streams is same,

II. As per the 2016 Ganga Order, definitions of basin, buffer area, catchment area, flood plain and riverbed do not make any distinction between perennial and non-perennial river, drain or water course,

[95] Depending on individual discretion; of, relating to, or involving, a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures, Black's Law dictionary, 11th Edition.

III. Its own precedent in the Bhag Singh case where it found the following based on expert opinion comprising representatives of the CPCB, IIT Roorkee, Indian Institute of Soil and Water Conservation, Dehradun[96]"

"perennial and non-perennial rivulets could not be distinguished as adverse impact of location of stone crushers close to water bodies was same"

Further, the Tribunal emphasized that the principle of siting will apply not only to units to be set up in future but also to those already set up as discussed in the Tejinder Jolly case where it found that:

"The stone crushers are in the prohibited distance as per norms which have to be applied even to existing stone crushers to enforce right of habitants to clean environment which is part of right to life."

IV. Permitting establishments within 50 meters of rivers (even non perennial) will run counter to the need for protection of floodplain zones. The Tribunal relied on the Dilip Samantaray case where it observed that:

"no project could be developed in a flood plain of the river even in absence of any statutory provision on the subject as doing so affects the riverine ecology adversely."

[96] *See* State of Himachal v. Bhag Singh, 2020 SCC OnLine HP 2680, *see* also Ghangal Stone Crusher v. State of Himachal Pradesh, CWP 3711 of 2021 and Himachal Grit Udyog v. Union of India, Civil Appeal 94 of 2019.

The Tribunal also relied on the Mantri Techzone case to restate its jurisdiction to interfere with policies to enforce the principle of sustainable development.

Based on these points, the Tribunal held that:

"distinction of perennial and non perennial for locating stone crushers or other such plants for maintaining distance is hit by the principle of 'Sustainable Development' under Section 20 read with Section 15 of the NGT Act, 2010 and is illegal."

Accordingly, it directed the State of U.K (through its CS) to **revisit**[97] its policy/regime to do away with such distinction for protection of all streams, water courses/rivers and clarified that this will also apply to all existing establishments whilst giving the liberty to any aggrieved establishment to move the Tribunal.

See this article for more details on the riverbed mining landscape in U.K.

19. **Narender Singh Negi v. Union of India** Original Application 435 of 2022 Dec 8, 2022 ②

challenge to executive instrument, multiple fora, PA

[97] *See* revision - A reexamination or careful review for correction or improvement, Black's Law dictionary, 11th Edition.

This case concerns a challenge to an Office Memorandum[98] whereby stone crushing activities were permitted in Banjani Badi, Pauri Garhwal, Dehradun.

The Tribunal had sought the addition of the Director, Rajaji National Park as a respondent and also information on a connected pending case before the U.K HC. Considering failure to ensure any compliances, the counsel for the petitioner withdrew the matter seeking liberty to file fresh application on the same cause of action after making requisite compliance which was granted.

20. P **Suraj Singh Karki v. State Level Environment Impact Assessment Authority, Uttarakhand** 2022 SCC OnLine NGT 270

Dec 9, 2022 ④

challenge to EC, mining, application of mind[99] by executive authority, consideration of relevant factors by executive authority[100], suspension of clearance, scrutiny

The application has been filed against EC granted in favor of the project proponents in violation of EIA Notification, 2006 with respect to a mining cluster at Village Nayal Biladi (Nayal Dhapola) Tehsil and District Bageshwar, U.K.

The Tribunal directed the Member Secretary of the State Environment Impact Assessment Authority **("SEIAA")** to furnish all

[98] An Office Memorandum is a document that is used for corresponding with other departments or in calling for information from or conveying information to its employees, Central Secretariat Manual for Office Procedure, 15th Edition, 2019, Page 77.

[99] *See* Ashish Rajanbhai Shah v. Union of India, 2013 SCC OnLine NGT 75.

[100] *See* Tata Cellular v. Union of India, (1994) 6 SCC 651.

details of consideration of the project by the authority to ascertain whether there was due consideration made to relevant factors, and whether the EC can be sustained without factoring seismic activity. The Tribunal also directed for a stoppage of mining activity till the next date.

Neither the project proponent nor the SEIAA furnished responses. Emphasizing on the *Hanuman Laxman Aroskar* case[101], the Tribunal noted that EC can be granted only after due application of mind which has to be reflected in minutes of SEAC and the EC order which in the present case has not been done. It found that the specific question of showing consideration of particular relevant factors - impact of mining on Reserved Forest and river and seismologically dangerous zone has not been adverted to.

The Tribunal directed the project proponent to file relevant studies about impact of mining on seismicity and impact on Forest/Wildlife Biodiversity within two months before SEIAA so that it may consider the same and pass a reasoned order considering all vital aspects before operationalizing the EC. Further, till such an order is passed, the Tribunal suspended the EC.

21. **Jitendra Sajwan v. Uttarakhand Environment Protection and Pollution Control Board** Original Application 871 of 2022 Dec 15, 2022 ②

challenge to permit for petrol pump, siting criteria, residential area

[101] (2019) 15 SCC 401.

This case concerns challenge to permit granted by the Mussoorie Development Authority for siting of petrol pump in close proximity to a residential habitation at Athurwala, U.K. According to the petitioner, such a permit is against the guidelines for siting of petrol pumps by the CPCB dated January, 2020.

When the case was last considered, the Tribunal had issued notices to the respondents however, on request of the petitioner, the case stood dismissed as withdrawn.

22. **Jeewan Chandra Kashneyal v. Bhuwan Chandra Kapri** Miscellaneous Application 51 of 2022 in Original Application 258 of 2021 Dec 19, 2022 ③

food processing industry, continuing violation of norms, execution of orders

The petitioner had raised an issue of non-compliance with the orders of the Tribunal directing the DM of Pithoragarh to take remedial action with respect to an Atta Chakki and Masala Udyog that was alleged to be operating in violation of environmental norms.

When the case was last considered, the Tribunal directed the DM to submit a compliance report within one month. In the absence of any report, the Tribunal reiterated its directions and disposed the case with liberty to the petitioner to avail remedies if necessary action is not taken.

23. **Soban Singh Ashwal v. State of Uttarakhand** 2023 SCC OnLine NGT 7 Jan 3, 2023 ②

cementing of drain, notified forest, blockage, construction, hill station

This case concerns illegal construction and cementing on a public drain at Mussoorie inside a notified forest, resulting in blockage.

The Tribunal directed the State PCB, PCCF (HoFF) U.K and DM, Dehradun to take appropriate remedial action and disposed of the matter.

24. **D.K Joshi v. State of Uttarakhand** Original Application 790 of 2022 Jan 4, 2023 ②

muck dumping, tree felling, road construction

This case concerns haphazard dumping of muck, debris and illegal cutting of trees, due to which environmental damage is being caused at the Bironkhal - Kargali - Kaulapur - Khetu Motor Road. According to the petitioner, proximate roads have been blocked due to this.

The Tribunal directed State PCB and DM, Pauri Garhwal to take remedial action within two months and disposed of the matter.

25. **Mamta Chourasia v. State of Uttarakhand** 2023 SCC OnLine NGT 13 Jan 5, 2023 ②

stone crushing, mining, river morphology, ditches, human-wildlife conflict

This case concerns a large number of stone crushers illegally operating and undertaking mining, creating 200-300 feet deep ditches causing damage to the environment at village Saimalchor and Pattapani, District Nainital, U.K. The petitioner also claims that wild animals are dying after falling into the deep ditches.

The Tribunal directed the State PCB and DM to look into the matter and file a report within three months.

26. **Subhash Chandra Gupta v. State of Uttarakhand** Original Application 853 of 2022 Jan 6, 2023 ②

cutting and leveling of slopes, mining, construction, forest area, NIMBY, demarcation[102]

This case concerns illegal cutting/leveling of steep hilly slopes by JCB machine and protection of reserve forest land from illegal constructions in Sinola, Dehradun.

According to the petitioner, a builder had started to dig and cut steep hilly slopes very close to his house and it is apprehended that it could cause damage to the foundation of his building. On complaints made to authorities, the construction was stopped as the builder did not have any mining permission. Further, according to the petitioner, the builder had illegally purchased forest land and had cleared it for planned construction of a multi-storey building.

The DM, in their response, cited the U.K Minor Mineral Rules and stated that cutting of hilly slopes would not require EC provided the sand mined is used for leveling of the same plot or some other plot

[102] *See* Line: a demarcation, border, or limit; see also demarcation, Black's Law dictionary, 9th Edition.

of the owner, and use of JCB machine is permissible. According to the report, the case of the private builder fell within this exemption.

Pending the final demarcation of the lands involved in this case, the Tribunal directed the state to remove any encroachments in forest areas involved and a report to that effect be sent to the DM within three months. The Tribunal disposed of the case directing the petitioner to file representations with local authorities in case of further grievances and that these be resolved expeditiously.

27. **Ram Kripal Gautam v. State of Uttarakhand** Original Application 875 of 2022 Jan 12, 2023 ②

sewage overflow, river, public health, water pollution

This case concerns sewer chambers located at Triveni Ghat of River Ganga at Rishikesh which overflow and spread pollutants across the area and river Ganga. According to the petitioner, such pollutants also cause foul smell and create unhygienic conditions thereby causing health hazards to local people.

The Tribunal directed the State PCB, DM, Dehradun and Assistant Engineer, Garhwal Jal Sansthan, Ganga Pollution Control (Unit), Rishikesh to look into the matter and take remedial and preventive action if required within one month.

28. **Prasad Vihar Welfare Maintenance Society (Regd.) v. Uttarakhand Environment Pollution Control Board** Original Application 1 of 2023 Jan 12, 2023 ②

heavy industry in residential area, incorrect remedy, crushing and grinding of slag, hazardous waste, noise pollution, NIMBY, cracks in residential infrastructure, displacement of people, limitation, public health, air pollution

This case concerns large scale metallurgical industries operating adjacent to a housing society in Landhoura, Haridwar.

According to the petitioner, the industry is producing 430 tonnes per day MS Ingots and billets and rerolling the same into various products emitting 1.97 tonnes per day pollutants in ambient air and generating 10.75 tonnes per day hazardous waste (slag). Industry has not adopted cleaner technologies and does not have adequate pollution control measures to contain the air pollution.

Further, the said Industry has installed crushers/grinders adjacent to the common compound wall of petitioners. During the process of crushing/grinding of slag, all the houses, along the compound wall, start shaking which has caused cracks/ deformities in the walls. The operation creates noise pollution, unpleasant smell and clouds of fugitive emissions. As a result, due to heavy pollution, owners of two houses in the colony have had to move out.

The Tribunal found that the permits had not been appealed against as provided under the NGT Act and a petition challenging these permits after they had gained finality could not be maintainable. The Tribunal hence rejected the petitioner stating that they had

failed to raise any specific violation *vis a vis* the permits that had been issued to the industries.

29. **Sompal Sharma v. State of Uttarakhand** Original Application 478 of 2022 Jan 20, 2023 ②

tree felling

This case concerns illegal cutting of Khair trees and carving out plots in village Chalang, Sahastradhara Road in District Dehradun.

The Tribunal disposed of the case in view of the report that duly verified by a Joint Committee as to there being no person of the name Sompal and there being no illegal cutting of the trees.



Sand Mining in the Gaula riverbed © Monika Mondal

30. P **Junaid Ayubi v. State of Uttarakhand**

sand mining, riverbed, boulder mining, inter-state mining, protracted litigation, connected cases, environmental compensation, legality of transfer of EC from state to private actor, sustainable mining, mineral survey, polluter pays, mine closure, riverine ecology, review

a. **Junaid Ayubi v. State of Uttarakhand** Original Application 692 of 2023 Jan 30, 2023 ④

This case concerns cluster (multiple units in close proximity to each other) river bed mining of sand, bajri and boulder at villages Dakpathar, Nawabgarh, Mandi Gangbhewa & Bhimawala, Tehsil Vikasnagar, District Dehradun, U.K which is a large site admeasuring about 123 hectares located on the river bed of River Yamuna.

The petitioner alleged impropriety[103] in transfer of permit to the current leaseholder and the grant of permit without jurisdiction considering that the site is located at the border of H.P and U.K. Further, the permit dated 17.08.2016 has expired as more than five years have passed. Single EC has been granted for two mines which are not permissible. No joint DSR has been prepared for mining near the inter-state boundary, as required. The petitioner also stated that another matter concerning the adjoining mining site is already pending before the Tribunal.

When the case was last considered, the Tribunal found that the amount of Rs. 1,05,83,296 claim to have been recovered by the

[103] *See* Improper: Incorrect; unsuitable or irregular; fraudulent or otherwise wrongful, Black's Law dictionary, 9th Edition.

Revenue Department does not reflect the cost of the entire mineral illegally mined by the proponent and there is nothing on record to show that for illegal mining and damage caused to the environment, any action has been taken by the State PCB with regard to assessment of Environment Compensation, lodging of FIR for committing crime by the proponent and other steps. The Tribunal sought a response from the project proponent and adjourned the case.

Meanwhile, the joint committee report filed in the case clarified that although illegal mining was found on site, the project proponent had agreed to reduce the extent of mining as per existing permits issued by various authorities over time including the HC of U.K, Central Government and the State Government to the GMVN who had then entered into MoUs with the project proponents for executing mining operations. The report clarified that the tehsildar had recovered a compensation of Rupees 1 Crore from the project proponents. The GMVN, in its own reply reiterated the fact that the mining was taking place with all necessary permits and based on an MoU entered between the project proponents and the GMVN. The Tribunal noted that no replies had been received by the proponents till date.

The petitioner challenged the findings of the joint committee report, stating that EC conditions were not being followed. Further, the clearance granted was for the state of H.P whereas mining was taking place across the border in U.K, as per google. The petitioner also relied on a letter issued by the MoEFCC to the GMVN highlighting these violations and seeking additional details with

respect to the environmental impact of the mining which was taking place.

The Tribunal framed the following questions for consideration:

1. Whether GMVN could have transferred ECs to private contractors without requisite compliances under the EIA Notification, 2006,
2. Whether compliances for lease areas falling over two different state territories had been made?
3. Whether the mining adhered to sustainable mining norms?

Based on the facts presented, the Tribunal answered each question in the negative. It noted that unregulated mining "*poses threat to biodiversity, destroys riverine vegetation, causes erosion, pollutes water sources, badly affects riparian ecology, damages ecosystem of rivers, safety of bridges, weakens riverbeds, causes destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of bird species, increases saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand.*"

Citing the *Deepak Kumar* judgment[104] of the SC, the Tribunal reiterated that "in-stream mining lowers the stream bottom of rivers which may lead to bank erosion."

The Tribunal also noted that the lease area fell in the Yamuna river bed, eco sensitive doon valley area and the doon valley aasan wetland conservation reserve where mining has been prohibited by the SC in its *Rural Litigation and Entitlement Kendra* judgment[105].

The Tribunal concluded that:

"mining in lots 21/1, 21/2 and 21/3 is illegal. Transfer of mining rights by GMVN to Manoj Joshi and Vinod Negi are without transfer of EC, in violation of EIA notification dated 14.9.2006, issued under EP Act, 1986."

And accordingly directed for closure of mining in these areas. Further, it directed a Joint Committee of CPCB, State PCB and DM, Dehradun to assess and recover compensation on polluter pays principle for illegal mining, following due process which may be utilized for scientific closure of the mining activities as per Mine Closure Plan and other norms. The indicative annual amount calculated by the Tribunal based on truck movement to and from the lease areas was 100 Crores. The Tribunal disposed of the case granting liberty to the private contractors to approach it if so required based on their independent rights to contest the proceedings.

[104] (2012) 4 SCC 629.

[105] 1989 Supp (1) SCC 504 at page 507.

b. **Junaid Ayubi v. State of Uttarakhand** 2022 SCC OnLine NGT 127 Mar 17, 2023 ④

The respondent state sought review as regards declaration of illegality of transfer of mining rights to the project proponents by GMVN, which has been granted EC by the State PCB and NBWL.

The Tribunal found that the transfer of EC was contrary to EIA notification and that the inter-boundary procedure[106] was not followed. The Tribunal also noted the adverse effects of mining in riverbeds and floodplains, as well as the SC judgments[107] against in-stream mining, which can cause significant environmental damage, and dismissed the application.

31. P **Deepak Kumar v. State of Uttarakhand**

stone crusher, challenge to permit, siting criteria, river morphology, distance from river, conflict of interest[108], review application, policy change with respect to stipulated distance of stone crushers from rivers, perennial v. non-perennial rivers, retrospective application of policy change, Tribunal jurisprudence with respect to stone crushers, jurisdiction of state to lay down siting criteria for stone crusher units

[106] *See* Enforcement and Monitoring Guidelines for Sand Mining, 2020, Page 50, available at https://environmentclearance.nic.in/writereaddata/SandMiningManagementGuidelines2020.pdf.

[107] (2012) 4 SCC 629 and (2014) 9 SCC 772.

[108] *See* Conflict of Interest: A real or seeming incompatibility between one's private interests and one's public or fiduciary duties, Black's Law dictionary, 9th Edition.

a. Deepak Kumar v. State of Uttarakhand Appeal 39 of 2022 with Original Application 702 of 2022 Jan 30, 2023 ④

This case concerns a challenge to permit granted for establishment of a stone crusher inside riverbed of Sheetla river in Doon valley, which is a PA as per a 1988 SC judgment[109] and 1989 notification which followed. This regime prohibited any stone crushing without prior permission of the Central Government. According to the petitioner, permission had not been obtained in this case.

The petitioner also alleged violation of the U.K Mineral (Prevention of Illegal Mining, Illegal Transport and Illegal Storage) Rules, 2020 and lack of any environmental impact assessment prior to grant of permit. The petitioner also alleged conflict of interest since the project proponent is closely related to the director of the Mining department, discrepancies in the application sent in for the purpose of getting a permit and lack of permission to extract groundwater. Along with the challenge to the permit, the Tribunal was also considering a challenge to a 2020 notification by the MoEFCC and a subsequent order by the U.K PCB shifting "screening" plants to a lower category of pollution causing industries and hence lower category of scrutiny when it comes to the permitting regime.

The case of the petitioners was that despite the entire area in question i.e doon valley, being protected as eco sensitive by the SC judgment[110] and thereby all mining industries being prohibited, authorities including the U.K PCB, MoEFCC and CPCB have been

[109] 1989 Supp (1) SCC 504.

[110] 1989 Supp (1) SCC 504.

making it easier for the mining industry to establish and operate in the region.

According to a joint committee report which came to be submitted in the meanwhile:

"stone crusher is not observed completely complying with the stipulated conditions of permission granted by Industrial Development Section, Govt. of Uttarakhand as well as conditions stipulated in Uttarakhand stone crusher, screening plant, mobile stone crusher, mobile screening plant, ready-mix plant State policy 2021."

The private parties/mining units raised the preliminary issue of limitation stating that both challenges had been made beyond the prescribed limitation period specified under the NGT Act. The parties also claimed to be completely compliant with all norms including mining policies of the State of U.K, groundwater extraction guidelines and the EP Act. The petitioners contested each of these grounds relying on extension of limitation period due to COVID as clarified by the SC, location of stone crushing units in close proximity to the river, google images, lack of any carrying capacity studies and existing precedent of the Tribunal with respect to the significance of both perennial and non-perennial rivers.

Findings of the Tribunal:

1. **On limitation**: The appeal was filed within limitation considering that the SC had extended the 90 day limitation period. The only delay involved was not in filing the appeal but in curing the defects. On the issue of the upper limit of filing an Original Application i.e. 6 months, the Tribunal found that since the issue involved non-compliance of

condition of the permits granted to the stone crusher units, another provision of the NGT Act, i.e. Section 15 would apply, which had a larger limitation period of 5 years.

Hence the Tribunal concluded that it had the jurisdiction to consider the issues raised before it.

2. **On the permissibility of stone crusher units at location**: The permits had been granted without consideration to proximity of the units from the river and hence liable to be quashed. The Tribunal also cited additional reasons including lack of any standards set by the Government at the time of reducing prescribed scrutiny levels for such units, the impossibility of substituting standards from another legislation to the EP Act[111], prohibition under the state mining policy and the precautionary principle.

3. **General permissibility of stone crushers in the Doon valley eco sensitive zone ("ESZ")**: Stone crushing is as hazardous as mining and setting up of stone crushers in ESZ has potential to enable illegal mining (for raw material) unless stringent safeguards, particularly about location of unit away from the source of mineral are followed.

 In light of the SC judgment[112] imposing stringent restrictions on industrial and mining activity in the region, the permissibility of the notification reducing the scrutiny

[111] *See* excerpt from order dated 30.1.2023: *"Siting criteria laid down by the State Government under the provisions of the Mines and Minerals Act cannot be taken as substitute for criteria to be prescribed with reference to EP Act and the Rules as State is not competent authority to do so."*
[112] 1989 Supp (1) SCC 504.

applicable on such units had to be considered seriously. The Tribunal placed this issue as a separate case for deliberation seeking specific responses of the MoEFCC, CPCB, State PCB, State of U.K and SEIAA, U.K on the issue of how in violation of judgment of the SC mining permissions are being granted in doon valley area.

In light of these findings, the Tribunal ordered for closure of the concerned stone crushing operations while keeping the question of validity of the notification open[113]. The Tribunal also asked the PCB to revisit permits issued to stone crushers in proximate regions based on its findings in the present case and disposed of the appeal.

b. **Deepak Kumar v. State of Uttarakhand** Review Applications 9 and 10 of 2023 in Appeal 39 of 2022 Mar 15, 2023 ④

This case addressed the review application filed by a stone crusher unit with respect to a common order of the Tribunal dated January 30, 2023.

The project proponent was granted EC for the operation of a stone crusher in District Dehradun, which is part of the Doon Valley area. The area was declared eco-sensitive by the SC in its *Rural Litigation and Entitlement Kendra* judgment[114]. The court had held that mining activities should be prohibited due to the fragile ecology of the valley. However, the state permitted a policy change in the category allotted for stone crushing from 'red' to a lower 'orange' without

[113] *See* order dated 1.3.2023 in the Original Application 702 of 2022 (not included in this handbook since the matter is still pending for consideration before the Tribunal). *See also*, affidavit filed by the MoEFCC in this case, dated 9.5.2023.

[114] 1989 Supp (1) SCC 504.

any study justifying it. It was this policy change relaxing norms for stone crushers that the stone crusher units relied on in the review applications.

The Tribunal noted that the concerned policy dated 11.11.2021, which reduced the stipulated distance of a stone crusher unit from a river, was not applicable as EC had been granted on 12.08.2021. The Tribunal relied on its judgment in the *Sanjay Kumar* case wherein it held that there was no distinction between perennial and non-perennial rivers, as per the Water Act, and the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016.

The Tribunal found that limiting the stipulated distance to 50 metres from a river was against the 'sustainable development' principle and the need for flood plain zone protection. The Tribunal accordingly dismissed the review applications based on the *Rural Litigation and Entitlement Kendra* judgment whilst noting that it was not for the mining department of a state to lay down criteria regarding stipulated distances of stone crushers from rivers (it was the responsibility of the MoEFCC to lay down such guidance).

32. **Madan Singh Gusain v. Arya Vihar Ashram** Original Application 708 of 2022 Feb 1, 2023 ④

effluent discharge, ESZ, river, soap manufacturing, coverage under EC regime

This case concerns the manufacturing of soap by Arya Vihar Ashram on commercial basis and discharging untreated effluent in an eco-sensitive zone i.e. river Bhagirathi by a unit situated on the bank of the river.

According to the petitioner, the said unit has no EC or consent from the competent statutory regulators under the provisions of Water Act and Environment (Protection) Act.

In view of an expert committee report filed according to which soap manufacturing was considered to be a low polluting industry and that no discharge was taking place on ground, the Tribunal disposed of the case.



Mules waiting on the way to Kedarnath © Zee News

33. P **Urvashi Shobhna Kachari v. Union of India** Original Application 561 of 2022 Feb 8, 2023 ④

pilgrimage tracks, animal cruelty, solid waste mismanagement, biodiverse region, carrying capacity, judicial policy making, traffic management, surveillance

This case concerns the issue of preservation of ecology in and around the pilgrimage tracks in the sensitive and biodiverse regions of U.K, particularly, Kedarnath Dham, Hemkund Sahib, Gangotri Gomukh Dham and Yamonotri Dham.

According to the petitioner, the huge amount of pilgrims and equines making their way to these sites is leading to extensive pollution and dangerous conditions and directly impacting major rivers such as the Mandakini, Bhagirathi, Alaknanda and Yamuna.

According to a report filed in the case, a huge solid waste mismanagement issue was observed on site, arising from untreated equine excrement, solid and plastic waste, and inadequate public toilets. According to the report, the daily limit on pilgrims i.e. 13,000 was breached during May to July each year. Mules and horses were being harmed in the process and insurance claim processing for dead mules and horses were getting delayed, leading to a consequent delay in burying the animals. The report recommended an extensive socio-ecological study for the entire region to regulate tourists and prioritize animal welfare.

The Tribunal observed that accountability needs to be fixed on erring departments and the situation remedied on war footing for protection of the environment, fragile ecosystem of Himalayas and upholding the principle of sustainable development. The Tribunal

was of the view that such a responsibility should not be left with Zila panchayats without serious involvement at the district and state levels.

Accordingly, the Tribunal constituted another expert committee and sought a report within two months. It sought emphasis on carrying capacity of the area, infrastructure for waste management and disposal of dead mules, CCTV cameras, awareness about waste management, funding, traffic management and compliance with existing laws. The Tribunal sought monitoring of the execution plan and timely revision under the supervision of the CS of U.K and disposed of the case clarifying that it may be placed before the bench for consideration if found necessary.

See also news report on monitoring of animal cruelty on Kedarnath route

34. P **Anand Swaroop Rastogi v. Uttarakhand Environment Protection and Pollution Control Board** Original Application 401 of 2022 Feb 9, 2023 ②

industrial park, air and water pollution, rainwater harvesting, effluent discharge, renewal of permits, delay on processing permit applications by PCBs, precautionary principle

This case concerns non-compliance of permit conditions by an industrial park at Mahuakheraganj, District Udham Singh Nagar, U.K.

According to the petitioner, the project proponent has not complied with the consent conditions concerning effluent

treatment, green belts, rainwater harvesting, and water and air pollution control systems.

Considering that the compliance status had been verified by the PCB, the Tribunal did not intervene any further. However, in light of delay of the Board in processing consent applications received from the project proponent, the Tribunal observed that allowing units to operate without disposal of applications for renewal is "*legally impermissible and administratively inexpedient.*"

The Tribunal added that closure of the defaulting Units during such pendency and departmental action against Officers of the State PCBs/Committees delaying disposal of renewal applications is the only remedy under the EL which are based on and governed by the precautionary principle. Hence, the Tribunal emphasized on processing of applications well before they were due to expire to avoid the aforementioned situation.

35. P **Mandakini Badh Prabhavit Samiti v. L & T Uttaranchal Hydropower Ltd.** Original Application 485 of 2017 Feb 10, 2023 ④

compensation, loss of life and livelihood, flood, damage to hydroelectric project, mental agony, court fees, oversight of Tribunal's decision by SC, expert opinion, review *vis a vis* clarification petition

The petitioner had approached the Tribunal seeking compensation of ₹8,94,10,000 from L&T Uttaranchal Hydropower Ltd. The petitioners raised the claim on account of damage to their houses due to blockage and breaking of Singoli-Bhatwari Hydro Electric

project of the project proponent on river Mandakini. The petition was filed in the backdrop of the disastrous flood event of June, 2013. They claimed a further amount of ₹4,14,00,000 for the mental agony and hardship faced by the flood victims in reconstructing the houses.

At an earlier occasion, the Tribunal dismissed the application made on similar grounds by the petitioner since they failed to pay the requisite court fees. The Tribunal had also noted then that the petitioners had shown no grounds for additional compensation sought, beyond the Rupees 7 Lakh already granted to each victim.

That order of the Tribunal was set aside by the SC on the ground that the petitioners had demonstrated their *bona fides* by depositing the requisite court fees and also that the petitioners were espousing the interest of flood victims. The SC directed for the case to be restored to the Tribunal for consideration on merits without passing any additional observations on the contentions raised by the petitioners.

When the case was last considered, in view of the fact that the SC was yet to take a final view about the constitution of another committee in the matter, the application was adjourned *sine die*[115].

The petitioner now approached the Tribunal stating that pendency of the said matter before the SC should not be a ground to keep the matter pending before this Tribunal. The Tribunal rejected this contention based on the reasoning that the application for

[115] With no day being assigned, Black's Law dictionary, 11th Edition.

clarification was in fact in the nature of seeking review of its earlier order keeping the issues pending till a SC decision is made.

Accordingly, the Tribunal rejected the case pending before it while noting that there was no material to substantiate the claim of the petitioners' for further compensation, without prejudice[116] to remedy in the light of orders of the SC in the pending matter, if so advised.

36. **Shailendra Kumar Sharma v. State of Uttarakhand** 2023 SCC OnLine NGT 74 **Feb 20, 2023** ②

gold refining, effluent discharge, inhabited area

This case concerns toxic effluents being discharged in close proximity to densely habited areas by a gold refining industrial unit in Rudrapur, U.K.

The Tribunal constituted a committee and sought a factual and action taken report within three months with particular reference to whether there was due compliance with conditions of the consent to operate granted to the industrial unit and disposed of the case.

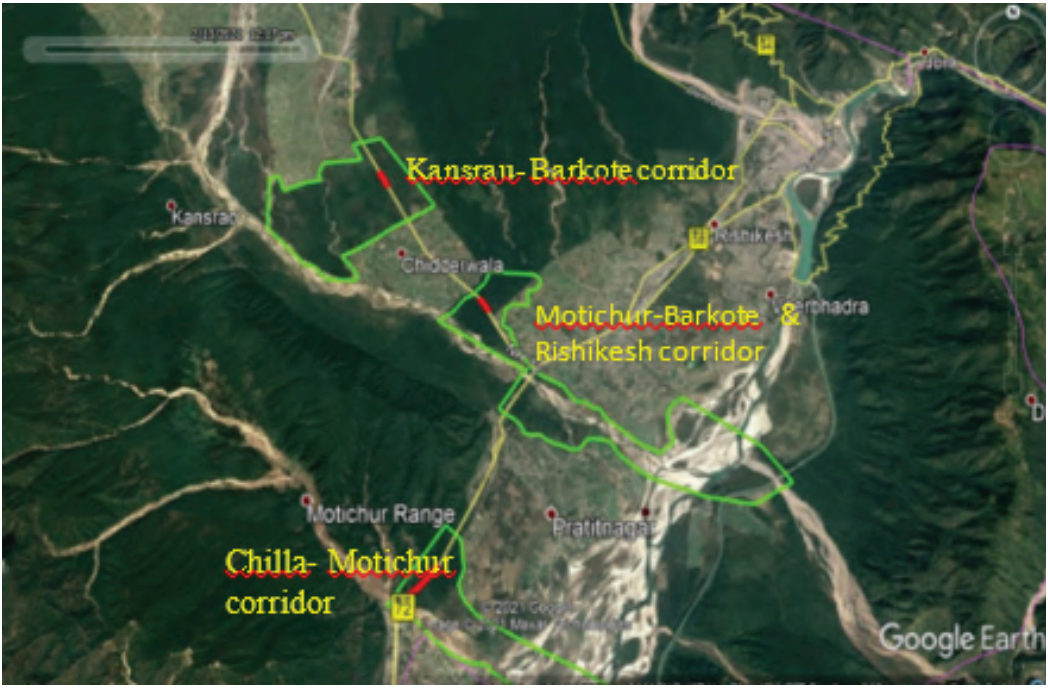
37. **Amit Agrawal v. State of Uttarakhand** 2023 SCC OnLine NGT 75 **Feb 20, 2023** ②

petrol pump, siting criteria, fire hazard, residential area, crisis management plan, hazardous chemicals, storage

[116] Damage or detriment to one's legal rights or claims, Black's Law dictionary, 9th Edition.

This case concerns a petrol pump which has been installed in the residential area in Dehradun in violation of the siting criteria and environmental norms hence damaging the environment. According to the petitioner, no action has been taken by the authorities in the matter. The petrol pump is located in a residential area. Further, on both sides of the petrol pump, requisite setbacks have not been left and precautionary measures with respect to fire have not been taken.

The Tribunal constituted a committee and sought a report within three months with particular emphasis on preparation of on and off site crises management plan and complying requirement of maintaining isolated storages as per Manufacture Storage and Import of Hazardous Chemical (MSIHC) Rules, 1989 in accordance with law.



Wildlife corridors in the Rajaji National Park area © Conservation Corridor

38. P **All India Young Lawyers Association v. State of Uttarakhand**
2023 SCC OnLine NGT 80 Feb 24, 2023 ④

hotels and resorts, commercial activity, ESZ, PA, multiple fora, environmental compensation, closure, evolving jurisprudence *vis a vis* ESZs, reconsideration of executive decisions, demarcation, oversight of committee report by Tribunal

This case concerns illegal functioning of Hotels, Resorts, Pubs, Clubs and Ashrams in Chilla Range of Rajaji National Park and other illegal commercial activities in the nearby area.

At an earlier occasion, the Tribunal had directed for the case to be heard along with another pending case where similar issues were involved (dumping of waste inside the Rajaji tiger reserve area). However, considering that this case involved certain additional issues, the Tribunal considered it fit to continue proceedings separately, in light of disposal orders being passed in the other case.

When the case was last heard, the Tribunal directed the PCB to recover environmental compensation within three months. Further, the Tribunal directed that the recovered amount be used for restoration purposes under the supervision of the same committee within six months. Further, the Tribunal directed that all the commercial activity in the forest in violation of the 1997 judgment[117] of the SC be closed and that this be enforced by the State PCB, DM, Director, Rajaji Tiger Reserve and compliance be sent in by February, 2023.

On perusing the report filed by the Director, Rajaji Tiger Reserve according to which some of the resorts were located outside the

[117] 1997 (2) SCC 267.

reserve hence warranting no closure, the Tribunal noted that the report does not cover the issue fully and ignores the mandate of law. According to the Tribunal, constructions are prohibited/regulated not only within the forest but also outside within 1 km of the boundary of Tiger Reserve, which is also covered by eco-sensitive zones. It is thus wrongly assumed that the resorts outside the boundary of the Tiger Reserve are legal even if they are within one kilometer of the boundary of the tiger reserve.

The Tribunal noted that even for those resorts that had been found to be violating the ESZ notification, only show cause notices had been issued. With respect to the resorts falling in close proximity to the reserve, the Tribunal sought revisiting of the decision to hold them to be legal in light of the Forest Conservation Act and the SC decision in the Godavarman matter concerning ESZs[118].

Accordingly, the Tribunal constituted a committee of higher ranking officers comprising ACS, Environment, PCCF Wildlife, Director, Wildlife Institute of India, Dehradun, Integrated Regional Office, MoEFCC, Dehradun and Director, Tiger Reserve and sought a report within prior to June 30, 2023. The Tribunal sought particular emphasis on whether there are any more illegal establishments in the Tiger Reserve in question or in prohibited sensitive areas and if necessary, get updated demarcation of the area in light of the SC judgment on ESZs. The Tribunal disposed of the case permitting relisting if necessary.

[118] *See also* news article on the status of the 1 kilometer zone outside ESZs as of April, 2023.

39. **Shanti Rawat v. State of Uttarakhand** Original Application 64 of 2023 Mar 3, 2023 ②

untreated effluents, discharge, parallel proceedings

This case concerns discharge of sewage and untreated effluent in river Ganga by Nagar Palika, Tehri and Chamba.

Noting that issues with respect to pollution of river Ganga were already pending in another case, the Tribunal disposed of the case.

40. **Brij Bhushan Dhaundiyal v. State of Uttarakhand** Original Application 70 of 2023 Mar 3, 2023 ②

screening plant operation, closure order

This case concerns a grievance against the screening plant at Dhalipur at village Nawabgarh, Tehsil Vikas Nagar, District Dehradun that continues to run despite a closure order passed by State PCB for causing pollution.

The Tribunal referred the matter to Member Secretary, State PCB, U.K to find out if the complaint was correct and take appropriate action against the proponent and officials concerned. It also directed the State PCB to take appropriate action against the proponent, including punitive, preventive (assessment of environmental compensation) action for violation of EL in accordance with law after giving due opportunity to the plant. While disposing of the application it further gave direction to submit an action taken report to the Tribunal.

41. P **Medical Pollution Control Committee v. State of Uttarakhand**
2023 SCC OnLine NGT 76 Mar 6, 2023 ④

common bio-medical waste treatment facility, Doon valley PA, reserved forest, area protected by notification and executive instruments, evolving guidance on biomedical facilities, monopoly of biomedical facilities due to siting guidance, multiple fora, judicial governance, necessity of biomedical facilities, application of mind by executive authorities, merit review by Tribunal[119]

This case concerns a challenge to an EC granted by the SEIAA, U.K in favor of the project proponent for a common bio-medical waste treatment facility at Village Kodarna, Tehsil Narendra Nagar, District Tehri Garhwal, Uttrakhand.

The petitioner had earlier challenged the classification of such facilities as non-industrial operations in Doon valley. The U.K HC dismissed the case, allowing the petitioner to instead move the Tribunal under Section 16(h) of the NGT Act.

The petitioner argued that the clearance was granted without application of mind, as the area was within Doon Valley and 10 km of a reserved forest. CPCB guidelines prohibited facilities within a 75 km radius, and the activity was classified as non-industrial, conflicting with the Doon Valley Notification.

The Notification was issued in response to the devastating effects of mining in the area. Certain activities, such as mining, were prohibited, while others were allowed subject to permits. The

[119] For the nature of the Tribunal's powers, *see* Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897.

Notification was amended on 06.01.2020, where certain activities including biomedical facilities were effectively classified as non-industrial on the basis of an updated CPCB classification and circular.

The Tribunal found that the EC did not conflict with the circular and the Doon Valley Notification. According to the Tribunal, waste treatment is a compulsion, and rejected the contention that a facility cannot be allowed within 75 km of the appellant's facility, citing its decision in the *Mukul Singh* case.

According to the Tribunal, the SEIAA, in its meeting minutes, required that the project's environmental impact assessment include a study of its impact and radial distance of 10 km from the reserved forest. Accordingly, the appeal was dismissed, and if violations occurred, the aggrieved party was allowed to take remedies as per law.

See also: U.K State Environment Appraisal Committee meeting minutes for the concerned project (Page 16)

42. **Anil Pal v. State of Uttarakhand** Original Application 155 of 2023 Mar 13, 2023 ②

mining of minerals, river morphology, agricultural land, national highway

This case concerns illegal mining of minerals in Gram Sabha Majrigrant, Development Block Doiwala, District Dehradun.

The petitioner alleged excessive mining from the river Jakhan, exceeding the prescribed limit, resulting in an increase in the depth

of the river, causing damage to National Highway 72, the agricultural land, and other activities going on in the surrounding area.

The Tribunal constituted a joint committee to investigate the issue. The committee was directed to collect relevant information and take remedial action within two months.

43. **Sunil Thapliyal v. State of Uttarakhand** 2023 SCC OnLine NGT 113 Mar 21, 2023 ③

muck dumping, river, road widening

This case concerns a complaint against unregulated muck dumping in the Yamuna River in the course of widening the road from Khaneda Khadd to Kuthnour in District Uttarkashi.

The Tribunal had sought a factual report from a joint committee regarding unregulated muck dumping in the Yamuna River. The report acknowledged some unscientific muck dumped in some places, but found muck dumping to be generally regulated. The Tribunal disposed of the application while directing the National Highways Authority of India **("NHAI")** to remedy the violations in accordance with the law.

44. **Ajit Yadav v. State of Uttarakhand** 2023 SCC OnLine NGT 144 Apr 13, 2023 ④

carrying capacity, damage to infrastructure, construction, mining, ropeway, tunneling, eco fragile area

This case concerns environmental harm caused by numerous activities in U.K, mainly in Dehradun and Mussoorie. The application referred to the development of cracks in Joshimath dwellings in 2023, as well as building and mining projects at the Dehradun-Mussoorie Ropeway and the Mussoorie Tunnel.

The Tribunal noted that it has already taken cognizance[120] of the issue in "In re: News item published in The Tribune dated January 16, 2023 titled "Joshimath disaster: a warning for Mussoorie." Therefore, the tribunal found it appropriate to dispose of the application.

Connected case: Ashok Kumar Raghav v. Union of India, Writ Petition 144 of 2023 before the SC

45. P **International Council for Culture and Languages Foundation v. District Magistrate & Collector, Chamoli** Original Application 272 of 2023 Apr 18, 2023 ③

carrying capacity, religious pilgrimage, railways, highways, tunneling, blasting, subsidence[121], scope of Tribunal's powers

[120] A court's right and power to try and to determine cases, Black's Law dictionary, 9th Edition.

[121] The gradual caving in or sinking of an area of land, Google.

This case concerns construction of the Char Dham railway project, hydel power projects, blasting, and tunnel boring in U.K. The petitioner seeks to prevent environmental mishaps like subsidence and damage to infrastructure at Joshimath.

The petitioner argued that U.K's religious places, including four holy temples, attract large numbers of visitors and developmental projects that are not sustainable in the state's fragile ecology. It calls for the prohibition and regulation of activities with potential disaster risks.

The Tribunal deliberating noted that the matter of sustainable development requires executive authorities to consider regulation on a case by case basis. A blanket prohibition of all activities is not possible without overwhelming evidence, and the Tribunal cannot direct such action. It has already addressed the issue in In re: News item published in The Tribune dated 16.01.2023 titled "*Joshimath disaster a warning for Mussoorie*", highlighting potential environmental threats from the Joshimath disaster and directing carrying capacity studies in eco-sensitive areas by an expert committee, and therefore disposed of the application.

46. P **Jaswinder Singh v. State of Uttarakhand** Original Application 172 of 2022 Apr 26, 2023 ②

riverbed mining, riverbed minerals (RBM), dredging[122], proximity to PA, river training[123], environmental compensation, applicability

[122] Clean out the bed of (a harbor, river, or other area of water) by scooping out mud, weeds, and rubbish with a dredge.: "the lower stretch of the river had been dredged" "the dredging and deepening of the canal", Google.

[123] *See* the Uttarakhand river training policy, available here.

of EIA regime to riverbed mining, forest area, transporting RBM through forest area, tiger reserve, riverine ecology

This case concerns sand mining in the riverbed of the Ramasan (a tributary of the Ganga) and in private reserved forest, in Rasulpur, Haridwar, U.K. The village itself is surrounded by forest land belonging to the Rajaji national park. According to the petitioner the mining has created deep ditches in the riverbed across an area of 10 square kilometers, and is causing severe damage to biodiversity and environment in the eco-sensitive area.

When the case was last considered, since the responses filed were vague, the Tribunal directed the State of U.K to furnish additional details with respect to the following specific issues:

1. whether the mining site in question falls in Reserved Forest Area/Eco-Sensitive Zone,
2. If the mining site in question does not fall in reserved forest, whether the same was situated within radius of 10 kms of Rajaji National Park,
3. whether the project proponent was required to carry out dredging only or was permitted to carry on commercial mining under the River Training Policy, 2020, and
4. whether any inspections were made during continuance of the mining lease

The Tribunal also sought U.K PCB to furnish information with respect to:

1. the date on which the environmental compensation was imposed and amount,
2. cases in which order seeking compensation was appealed against and status of these and remaining cases, and
3. amount of environmental compensation used to restore the environment

The PCB clarified that the land in question does not fall within forest. However, the passage[124] for entering into the site passed through forest land. To that end, the Forest Department had permitted the proponent to clear the riverbed minerals (RBM) whilst passing through forest road. Further, Rajaji Tiger reserve was about 3 kilometers from the site in question. The report clarified that the order to remove the RBM was given in order to avoid the flood situation in the Ramasan river on the recommendation of the Government of U.K in order to avoid loss of life and property. The report also clarified that the mining department was closely monitoring the situation including initiating proceedings in the Court of the Additional District Judge for recovering compensation.

Based on the report, the Tribunal framed the following question for consideration:

"whether such training of river which involves removal of minor mineral for sale on payment of royalty amounts to commercial mining and requires prior environmental clearance (EC)."

[124] A right, privilege, or permission to cross land or water; an easement to travel through another's property, Black's Law dictionary, 9th Edition.

The Tribunal, relying on the EIA Notification, 2006 and the SC judgment[125] in the *Deepak Kumar* case, found that:

"mining of minor minerals from river bed requires prior environmental clearance from MoEF & CC or SEIAA under the provisions made in EIA Notification 2006. Even dredging and desilting of river with permission for removal of minor mineral for sale on payment of royalty, tax etc., amounted to mining."

Hence, the Tribunal found that the activities in question required clearance under the EIA Notification, 2006.

The second question framed by the Tribunal was as follows:

"whether mining of minor minerals using heavy machineries and transporting it to market place was permissible within the area of 10 kilometers from Rajaji Tiger Reserve/Rajaji National Park."

The Tribunal, on tracing the legal position with respect to mining in proximity to PAs, found that:

"if the concerned area where mining is proposed falls within the ESZ, the mining activity will not be permitted, even if it falls in an area which is beyond one kilometer from the boundary of the Protected Area.

In the present case the piece of land in question was situated beyond 1 kilometer from Rajaji National Park and Rajaji Tiger Reserve and, therefore, mining of minor minerals in the same was not prohibited and was legally permissible."

The Tribunal was of the considered view that the environmental impact of the removal of minerals from riverbed and their passage

[125] (2012) 4 SCC 629.

through forest land needs to be studied *"for adopting requisite remedial measures to mitigate adverse impact of such activities on riverine ecology and environment."* To that end, the Tribunal directed the CS to take requisite steps.

The Tribunal further recalled its earlier direction to the PCB to initiate proceedings against the proponent and recover environmental compensation within six months. The Tribunal found that:

"only negligible (about 5%) of the environmental compensation imposed on the violators on polluter pays principle has been realized and even the same has not been utilized for any activity for remediation of environmental damage caused and protection and improvement of environment."

Accordingly, the Tribunal directed the PCB to evolve a suitable plan for utilization of environmental compensation *"for remediation of the environmental damage caused and other environmental Management activities - afforestation, soil conservation, damaged land reclamation, river embankment management"* and disposed of the case.

See also: Reports dated 4.7.22, 5.7.22, 21.9.22, 3.2.23 and 4.2.23.

47. **Rohit Negi v. State of Uttarakhand Original Application 848 of 2022** **Apr 26, 2023** ③

river floodplain, encroachments, leveling[126], construction of walls, stone mining, eviction proceedings, environmental compensation, afforestation

This case concerns a complaint against encroachments in the floodplain of the River Ramgarh, District Nainital, U.K.

[126] Give a flat and even surface to, Google.

The Joint Committee's report stated that illegal leveling, construction of walls, and mining of stones were done by a builder. It made recommendations, including eviction proceedings and compensation of Rs. 5,15,592 as remedy measures. A show-cause notice was issued to the builder.

In view of the report, the Tribunal noted that further action was needed to prevent illegal construction and mining in flood plains. Compensation for past violations was to be assessed and recovered by the state PCB.

The PCB, in coordination with the DM, was directed to file an action taken report within two months with particular reference to afforestation measures to prevent further encroachment on open land in the floodplain.

48. **Subedar Major Rajendra Prasad v. State of Uttarakhand** Original Application 237 of 2023 Apr 27, 2023 ③

river pollution, sewage, plastic, public health, planning

This case concerns pollution of the river Suswa by the release of polluted water at villages Doiwala and Nauka in District Dehradun, U.K. According to the petitioner, in addition to sewage water, plastic bags are being put down the drain, endangering the environment and public health. The region has been incorporated into Dehradun's urban area, but no remedial actions have been implemented.

The Tribunal was of the opinion that the situation should be investigated and corrective action taken by the DM of Dehradun

and the State PCB and accordingly disposed of the case whilst directing that "*untreated sewage and plastic are not discharged and dumped into the river*."

49. **Mohan Singh Bagri v. State of Uttarakhand** Original Application 239 of 2023 Apr 27, 2023 ③

 muck dumping, road construction, public health, executive guidelines

 This case concerns unscientific muck handling in the construction of Semlata Kafna Dungra Motor Road at Rudraprayag, U.K, since 2018. The construction has been ongoing since 2018, causing environmental and public health issues. The guidelines from the Public Works Department **("PWD")**, Dehradun, were not being followed.

 The Tribunal disposed of the application while noting that the DM and U.K State PCB should investigate and take remedial action.

50. **Sumrit Dutta v. State of Uttarakhand** Original Application 196 of 2023 Apr 28, 2023 ②

 biomedical waste, burning, hospital, public health, NIMBY

 This case concerns burning medical waste by a hospital in New Haridwar Colony, Jwalapur, Haridwar, U.K. According to the petitioner, such burning is ongoing without proper management, causing pollution and health hazards for residents.

 The Tribunal constituted a joint committee directing it to investigate the complaint, visit sites, collect information, and take

remedial action within two months if environmental violations were found.

51. **Gopal Chandra Vanwassi v. SDM, Ramnagar** Interlocutory Application 427 of 2023 in Original Application 396 of 2022 Apr 28, 2023 ③

stone crushers, non-compliance, multiple fora, environmental compensation, interim relief

This case concerns the operation of 16 stone crushers in the district of Nainital, U.K, violating environmental norms.

To verify the allegation, the Tribunal sought a committee report, which disclosed that seven of the sixteen units in question were non-compliant, eight had not been established despite having received NOC from the state, and one had not yet got a NOC. Non-compliant units were sent with a show-cause notice for closure and compensation.

Eight stone crushers who had received a NOC were told not to set up shop until they received consent to do so. The Tribunal directed that all 16 stone crushers file a response. The State PCB stated that seven non-compliant units had become compliant. For previous violations, compensation was recommended. Further affidavits were filed, and the PCB added that a similar case[127] was pending before the U.K HC. The status of stone crushers has been reported on the website of the U.K PCB. Thereafter, the Tribunal constituted another committee to verify the facts.

[127] Devendra Singh Adhikari v. State of Uttarakhand, Writ Petition (PIL) 168 of 2019.

In the present case, an interlocutory application was filed by six out of seven stone crushers that have been declared compliant by the PCB, stating that no re-verification was needed in their case. Accordingly, both applications were disposed of by the Tribunal subject to reverification of compliance status of the remaining unit.

See also: Reports dated 12.9.22, 12.9.22, 12.9.22 and 25.3.23

52. **Kailash Singh v. State of Uttarakhand** Original Application 827 of 2022 9 May 2023 ③

mining, blasting, water courses, grazing land, potential impact on environment, steep slope, absolute prohibition on mining

This case concerns illegal mining in village Sorag, Tehsil Kapkot, District Bageshwar, involving blasting and affecting house safety, trees, water courses, and grazing land.

According to a joint committee report filed in the case, illegal mining near Ugiyan Village might cause damage to 4000 trees, grazing land, and storm water drains. Villagers have opposed the mining due to its geographical location (and a 45 degree slope) and potential damage.

On consideration, the Tribunal directed the DM to ensure that no mining takes place in the area.

53. **Sudhir Joshi v. State of Uttarakhand** 2023 SCC OnLine NGT 183 10 May 2023 ③

muck dumping, road construction, temporary lake, solid waste mismanagement, muck dumping sites, environmental compensation, tree damage, closure of unauthorized muck dumping sites, future measures

This case concerns unscientific waste dumping in the river Jakhan during the construction of a 12 km road from Itharna to Kukhai in Districts Tehri Garhwal and Dehradun, thereby forming a temporary lake near Shambhuwala village.

The joint committee constituted in the case acknowledged the stated violations and lake formation, with 27 trees damaged due to muck dumping. Further, it stated that a compensation of Rs. 50,000/- had been recovered. Four unauthorized dumping zones were set up, further damaging trees. The conditions for permission for forest land diversion for road construction were violated, allowing muck dumping beyond specified sites.

The Tribunal directed that remedial action was needed for violations, including compliance with forest land diversion and environmental norms, closure of unauthorized muck dumping sites, prohibition on any unauthorized dumping sites in the future, and planting on affected sites.

54. **Rajeev Chopra v. State of Uttarakhand** Original Application 513 of 2022 May 16, 2023 ②

tree felling, encroachment, storm water drain, construction, lack of evidence

This case concerns illegal tree cutting and encroachment on storm water drains for the construction of a community centre in Majhola-Rakhwal and Doiwala villages, Tehsil Rishikesh, District Dehradun.

According to a joint committee report filed in the case, there was no evidence of tree cutting or water body presence in the land where the community centre is being constructed. Accordingly, in the absence of any objections, the Tribunal disposed of the case.

55. P **Friends v. Union of India** Original Application 701 of 2019 May 16, 2023 ③

solid waste mismanagement, ban of waste dumping across state, executive inaction, multiple cases on similar issue

This case concerns dumping of waste, including solid waste, plastic, bio-medical waste, construction and demolition waste, hazardous waste, and other obnoxious material, in the state of U.K. The petitioner seeks a ban on waste dumping in U.K, focusing on waste management in the hills and higher reaches, and alleges state agencies' ineffective disposal and management.

The matter was previously considered before the Tribunal in another case dealing with waste management in the state of U.K.

The Tribunal assessed the compliance status considering the data submitted. Considering this, directives for corrective action have been given, including the setting aside of Rs. 200 crores in a ring-fenced account to solve waste management inadequacies. The application was disposed of as no further order appeared to be necessary.

56. P **Mohan Chandra Sati v. State of Uttarakhand** 2023 SCC OnLine NGT 182 May 16, 2023 ③

mining, stone crushing, industrial complex, wildlife human conflict, elephants, PA, protection wall, prohibited area, wildlife clearance, EC

This case concerns failure of the Rajaji National Park authorities, to construct a protection wall from Simbalkhal to SIDCUL to protect

the park's flora and fauna, prevent illegal mining and stone crushing, and promote environmental protection.

According to the petitioner, directions are essential for reducing animal-human conflict and environmental conservation. According to a report filed in the case, the Sidhbali Stone Crusher in question has been closed in view of an order[128] of the U.K HC, till permission from National Board for Wildlife is duly received. No illegal mining was found during the inspection. A 500-meter protection wall is being constructed in the Rajaji Tiger Reserve buffer zone.

The Tribunal found the need for further measures to prevent elephant-human conflict. Further, the Tribunal was of the opinion that a 2 kilometer wall is needed. Noting that there is a clear connection between stone crushing and mining activities, the Tribunal directed the Rajaji National Park Director to ensure mining without EC is not allowed within the stipulated prohibited distance from the boundary wall. It also sought a status report from the Director, Rajaji National Park, with regard to the issues raised and disposed of the case.

See also connected news article on elephant habitat fragmentation

57. **Green Bridge Trust v. State of Uttarakhand** 2023 SCC OnLine NGT 175 May 18, 2023 ③

construction, tree felling, carrying capacity, seismic zone, landslides, lack of specific facts

[128] Devendra Singh Adhikari v. State of Uttarakhand, Writ Petition (PIL) 168 of 2019.

This case concerns indiscriminate construction in Village Manyoli Chitai, District Almora, U.K. According to the petitioner, trees are being felled and the area lacks the requisite carrying capacity due to earthquake-prone zones and landslides.

The Tribunal found that the petition lacked material facts[129] especially with respect to construction and carrying capacity and hence refused to entertain the same. However, the Tribunal suggested that the petitioner may approach the concerned authorities with all relevant details.

58. **Ramprakash Sundriyal v. State of Uttarakhand** Original Application 277 of 2023 May 25, 2023 ②

muck dumping, road construction, road cutting, limitation period, jurisdiction of the Tribunal under Section 14 of the NGT Act, impact on forest

This case, filed by an ex-president of Gram Sabha Kundai, concerns construction of the Naugaon Suri motorable road in Uttarkashi, causing damage to forest trees like Banj, Buransh, Ayar, Devdar, Cheed, Kail etc. According to the petitioner, the concerned agency illegally dumped muck in the reserve forest in the process of road cutting. The petitioner however admitted that the dumping was completed in 2020, with no activities taking place for nearly three years since.

Considering that there was a considerable delay in filing the petition and therefore no cause of action surviving, the Tribunal

[129] A fact that is significant or essential to the issue or matter at hand, Black's Law dictionary, 9th Edition.

found that there was no substantial question relating to the environment, and therefore no further order was required.

59. **Amit Kumar Jatav v. State of Uttarakhand** Original Application 356 of 2023 May 29, 2023 ②

tree felling, lack of specific allegations, environmental compensation

This case concerns construction at Bhalla farm near a rice mill in Rishikesh, which involves unauthorized cutting of 40 to 50 old (60 to 70 years) trees, causing environmental damage. The Tribunal noted that the petitioner did not mention the time when the trees were cut.

The Tribunal directed the District Forest Officer, Haridwar to visit the site, collect relevant information, and take remedial action in case tree protection laws are violated including assessment of environmental compensation, within two months.

60. **Girish Tiwari v. State of Uttarakhand** Original Application 358 of 2023 May 29, 2023 ②

printing press, chemical effluent discharge, urban area

This case concerns a printing press located near the residence of the DM, in Rajpur, Dehradun, named "Petroleum and Energy Publication" that discharges chemicals into drains due to plate washing, causing water pollution. According to the petitioner, authorities have not taken action despite complaints.

The Tribunal was of the view that local authorities should investigate the complaint and directed the State PCB to visit the

site, collect information, and take remedial action within two months, including an environmental compensation assessment.

61. **Hema Rawat v. State of Uttarakhand** Original Application 398 of 2023 May 30, 2023 ②

 solid waste mismanagement, land use change, green area, parking lot, NIMBY

 This case concerns a vacant plot in the Mussoorie-Dehradun Development Authority, which was planned as a green area. However, no development has taken place, causing the land to be used as a dumping ground for solid waste. The Authority has also decided to convert the plot into a parking area, which, according to the petitioner, is not permissible as a green area cannot be used for commercial purposes.

 The Tribunal directed a joint committee to investigate and take remedial and preventive action within two months.

62. **Sheetal Sahu v. State of Uttarakhand** Original Application 403 of 2023 May 30, 2023 ②

 construction, Ganga regulatory zone, judicially regulated construction on and around river, vague allegations

 This case concerns illegal constructions within the regulated zone of the river Ganga and its floodplain. The petitioner relied on the Tribunal's detailed directions in its M.C Mehta judgment wherein it had demarcated certain prohibitions and restrictions on any development up to 500 meters from the middle of the river. The petitioner also relied on a subsequent order passed by the Tribunal

in the same case wherein it had reiterated regulation in and around the river course and directed states to notify the floodplain of the Ganga.

The Tribunal noted that no information regarding the constructions, time of construction and persons responsible was provided. Accordingly, the Tribunal rejected the application.

63. **Deepika v. State of Uttarakhand Original Application 390 of 2023 May 30, 2023** ②

concretization, interlocking, groundwater, water seepage, impact on trees, urban area

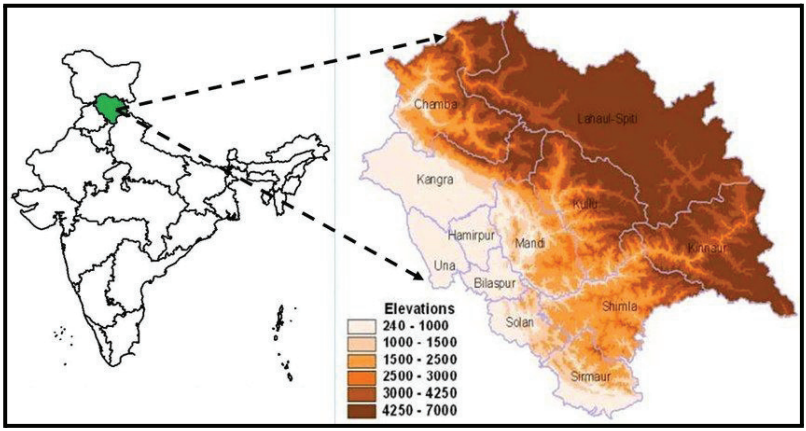
This case concerns damage to trees due to concretization by local bodies outside old Rishikesh railway station. According to the petitioner, such concretization is also blocking seepage of water and causing groundwater contamination.

The Tribunal noted that it has already addressed the issue of concretization of land around trees in two cases in the past[130].

However, the Tribunal found that the photographs show interlocking, not concretization, in the complaint, which was a permissible activity. Accordingly, the Tribunal rejected the petition.

[130] *See* Aditya N. Prasad v. Union of India, Original Application 82 of 2013, order dated 23.4.2013 (subsequent circular regarding concretization issued by Government of Delhi) & Environment Protection Society (Regd.) v. State of Punjab, Original Application 346 of 2019, order dated 8.8.2019.

State of Himachal Pradesh



Overview

If U.K stood out for being the most voluminous in terms of complex litigation, H.P is an example of the Tribunal entering into the realm of judicial policy making on issues such as state-wide planning[131].

Since its landmark 2017 judgment in the *Yogendra Mohan Sengupta* case[132], the Tribunal has doubled down on **ill planning** in mountain cities such as Shimla, Dharamshala, Kullu, Manali and Kasauli[133], with the same style of intervention carrying over across the border to Mussoorie and Joshimath[134] in UK and Doda in Jammu & Kashmir[135].

HEL *vis a vis* planning can therefore be credited largely to the developments in HP (and ensuing litigation) in arguably much the same way as mining issues in Haryana led to the landmark *Deepak Kumar* judgment[136]. However, the Tribunal's role in deciding the validity of city plans has been put in question by the SC[137]. In fact, all

[131] The Tribunal has often used the term "carrying capacity" as a central concept in its judgments related to mountain planning. *See* Yogendra Mohan Sengupta v. Union of India Original Application 297 of 2022 and Yogendra Mohan Sengupta v. Union of India Original Application 121 of 2014.

[132] *See* Yogendra Mohan Sengupta v. Union of India Original Application 121 of 2014.

[133] Ramesh Chand v. State of Himachal Pradesh, Original Application 635 of 2017, Society for Preservation of Kasauli and its Environs (SPOKE) v. M/s Kasauli Galaxie Resorts Original Application 218 of 2017 and Yogendra Mohan Sengupta v. Union of India Original Application 297 of 2022.

[134] See In re : News item published in The Tribune dated 16.01.2023 titled "Joshimath disaster a warning for Mussoorie" Original Application 51 of 2023.

[135] *See* In re : News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J & K village develop cracks", Original Application 93 of 2023.

[136] (2012) 4 SCC 629.

[137] *See* The State of Himachal Pradesh v. Yogendra Mohan Sengupta, Civil Appeal 5348-5349 of 2019:

orders concerning the Tribunal's intervention *vis a vis* the cities mentioned have been challenged before the SC[138].

Irrespective of the result of the various appeals against the Tribunal's intervention, there is no doubt that judicial review of executive planning decisions in mountainous areas has expanded. For instance, it was partly because of the Tribunal's detailed orders in the *Yogendra Mohan Sengupta* set of cases, wherein it recorded the various issues with respect to planning in Shimla, that the SC enforced a time bound consultative process in finalizing the city development plan[139].

In another case, the Tribunal rejected a taxi union's plea of relaxing the number of vehicles allowed to cross the Rohtang pass on the basis of serious environmental impacts of vehicular pollution on the eco sensitive region[140]. Crucially, climate change was one of the phenomenons considered by the Tribunal. Even if challenged before the SC, detailed findings[141] on the impacts of vehicles on high altitude

"8. We, therefore, grant liberty to the applicant(s) to take recourse to the remedy available under Article 226 of the Constitution of India and bring unauthorized constructions to the notice of the High Court.

9. Needless to state that on such petitions being filed, the High Court would decide such petitions with due urgency that the issue requires."

[138] *See* Kasauli Hoteliers and Residents Welfare Association v. Society for Preservation of Kasauli and its Environs (SPOKE), Civil Appeal Diary No. 11525 of 2019, Hotel Kasauli Inn v. Society for Preservation of Kasauli and its Environs (SPOKE) available here, Civil Appeal 10377 of 2017, The State of Himachal Pradesh v. Yogendra Mohan Sengupta, Civil Appeal 5348-5349 of 2019 and M/s Citrus Manali Resort v. Ramesh Chand, Civil Appeal 829 of 2019.

[139] *See* The State of Himachal Pradesh v. Yogendra Mohan Sengupta, Civil Appeal 5348-5349 of 2019.

[140] *See* Court on its own Motion v. State of Himachal Pradesh 2023 SCC OnLine NGT 146.

[141] *See* the following excerpt from the NEERI report hyperlinked:

environments will form part of the record to be considered by the Court, hence moving the ball forward in terms of mountain planning.

The Tribunal's intervention in executive planning was accompanied by various cases directly involving **construction of roads and buildings**. In fact, close to one third of the cases tracked for HP dealt with construction[142]. Unfortunately, no unified jurisprudence of construction in mountainous areas (other than in major cities and tourist attractions) was observed. Arguably, policy decisions made by the State of H.P have been directly influenced by these interventions. For instance, the HP government recently imposed a 100 meter "four lane planning area" restricting construction adjacent to highways[143].

Construction also increases demand for stones and sand, hence giving an impetus to **mining** activities. The mining industry has an extensive presence across the state, as is clear from the protracted litigation in the *Amandeep* case[144] covered in greater detail in the first edition of this

"Factors affecting erosion rates are broadly identified as wind speed and Precipitation, Soil Structure and composition, vegetation cover and topography. Human activities that increase erosion rates are Agricultural practices, Deforestation, Roads, Urbanization and Climate change."

[142] *See* Satnam Singh v. State of Himachal Pradesh Original Application 389 of 2022, Ram Singh v. State of Himachal Pradesh Original Application 173 of 2022, Narayan Singh v. State of Himachal Pradesh Original Application 685 of 2022, Dalip Singh v. State of Himachal Pradesh 2023 SCC OnLine NGT 17, Dr. Pawan Kumar Banta v. Union of India 2022 SCC OnLine NGT 210, Chander Mohan Sharma v. State of Himachal Pradesh Original Application 745 of 2022, Kultar Singh v. Forest Department & Revenue Department Original Application 471 of 2022, Mohinder Singh v. State of Himachal Pradesh Original Application 419 of 2022, Vir Singh Rana v. Ministry of Environment, Forest and Climate Change Original Application 264 of 2022 and Raj Dogra v. State of Himachal Pradesh Original Application 348 of 2023.

[143] *See* article titled "To regulate constructions, Himachal nod to 100-m special zone along 4-lane roads", available here.

[144] *See* Amandeep v. State of Himachal Pradesh Original Application 57 of 2021.

handbook. The very protraction of this issue before the Tribunal has led to an evolution in how the concept of environmental compensation is conceived and interpreted by executive authorities such as the CPCB, with greater emphasis on deterrence and loss of ecosystem services.

Regulation of **planning, construction and mining** in HP is crucial especially in light of climate change. It is perhaps a travesty that these very factors led to widespread disaster in the state in July, 2023, leading to a loss of more than 150 lives. Crucial sections of national highways and bridges were completely washed away in the deluge, leading to an estimated loss of close to Rupees 8,000 Crores to the state, incidentally more than twice the cost at which the flagship Atal tunnel was completed.

One can only imagine what the figures could have been but for the intervention of the Tribunal.



Multistory construction in McLeodganj, Dharamsala

64. **Rajesh Kumar v. State of Himachal Pradesh** Original Application 385 of 2022 Jul 6, 2022 ②

solid waste dumping, vacant land, public health, wildlife, hotels, tourism, vague allegations

This case concerns the dumping of waste in vacant land by hotels and restaurants in Dharamshala, H.P, causing public health issues and harming wildlife. The petitioner appended a list of concerned establishments that he alleged were causing pollution along with the letter petition addressed to the Tribunal.

The Tribunal noted that the issues raised by the petitioner were vague and the need for specific details of polluters and polluting activities to take requisite remedial action. However, the Tribunal clarified that if the petitioner provides specific details, the PCB and DM of Kangra may look into the matter, verify facts and take appropriate action against the polluters following due process of law.

The Tribunal also observed that under the 2016 Solid Waste Rules, waste collection, segregation and disposal is the responsibility of the municipal authorities and directed the Municipal Commissioner to look into the matter and take remedial steps to ensure strict implementation of the 2016 rules and directions issued by the Tribunal in the past in this regard.

65. P ⑤ **Pritam Singh v. State of Himachal Pradesh** Original Application 187 of 2022 Jul 14, 2022

hazardous waste, agricultural land, groundwater, public health, multiple fora, inter-state, reclamation

This case concerns discharge of toxic effluents from an alkali industry in the lands and groundwater in Malukpur and Veenewal villages, H.P, from across the border in Ropar, Punjab. The petitioner alleges that due to this pollution, their lands have become uncultivable, groundwater had become undrinkable and unusable for irrigation due to which they had to be closed down. Further, the petitioner alleged that the gas leaked from the industry was causing serious public health issues for inhabitants of these villages.

Despite orders passed by the Punjab HC, no action has been taken by the Punjab PCB. Despite objections from locals, the industry was permitted to raise a captive thermal power plant within its premises aggravating the environmental pollution in the area.

According to a joint committee report filed in the case, the industry concerned was largely compliant with the exception of highly acidic soil in the lands around the industry. The Tribunal directed the industry to reclaim the soil involved in coordination with the agriculture department of H.P. It directed the department to ascertain whether the reclamation was satisfactory and submit a report within two months. Further the Tribunal directed the Punjab PCB to ascertain full compliance with the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 particularly with respect to onsite and offsite management plans and mock drills.

66. **Karam Singh v. State of Himachal Pradesh** Original Application 163 of 2022 Aug 24, 2022 ②

solid, electronic, plastic and hazardous waste, forest area, encroachment, rubber tyres, burning

This case concerns mismanagement of solid, liquid and hazardous waste in encroached forest area by a scrap recycling business in Bilaspur, H.P. As per the petitioner, the hazardous waste includes lead acid batteries, e-waste, tube lights, TVs and PCBs, chromic acid etc. Burning of plastic and rubber tyres is also involved. An aluminum anodizing plant has also been established without requisite permits. The waste recycling facility is also located in close proximity to habitation and public roads.

The committee constituted in the case did not find any environmental violations or encroachment of forest land by both the recycling and anodizing units. However, the committee found that there had been encroachment over land owned by the PWD and Department of Animal Husbandry for which appropriate coercive directions had been issued. Accordingly, the Tribunal did not find it fit to further intervene in the matter and disposed of the case.

67. **Dr. Pawan Kumar Banta v. Union of India** 2022 SCC OnLine NGT 210 Sep 14, 2022 ③

construction, hotels, apartments, protracted litigation, multiple fora, debris, drain

This case concerns unauthorized construction of eleven storeyed hotel/apartments on the agricultural land at Up Mohal Kiari/Rirka, Tehsil Shimla (R), District Shimla, H.P. According to the petitioner, such construction is in violation of an earlier judgment of the Tribunal heavily restricting construction in the city. The petitioner seeks enforcement of an earlier order passed with respect to the same issue of unauthorized construction in Up Mohal, wherein the Tribunal had directed the SEIAA, PCB, Department of Town Planning and MC, Shimla to finalize pending proceedings against unauthorized construction in question. The Tribunal had then also given the petitioner liberty to approach it against the decisions arrived at if required. In the meantime, electricity and water supply to the building was stopped due to the orders of the Tribunal.

The petitioner has now claimed that the construction is continuing though it was stated before the Tribunal that the construction had stopped. Debris is being dumped into the drain. On the other hand, the authorities are not finalizing the pending proceedings as per directions of the Tribunal.

The Tribunal directed the SEIAA, H.P, State PCB, TCP and MC, Shimla to look into the matter, verify facts and take remedial action as per law and refused to intervene any further since similar issues

were also being considered by the HC of H.P. The Tribunal reiterated its earlier observation that the petitioner would be at liberty to approach it against directions passed by the SEIAA, H.P., State PCB, TCP and MC, Shimla.

68. P **Amandeep v. State of Himachal Pradesh** Original Application 57 of 2021 Sep 20, 2022 ③

sand mining, protracted litigation, multiple committees, heavy machinery, environmental compensation, market value, multiple fora

This case concerns illegal mining of sand in a 63 kilometer stretch of the Som Bhadra riverbed (also known as 'Swan' river) using Pokland machines, JCBs, and tractors, in district Una of H.P. The matter came up for considering the progress on the issue of remedial action against extensive unscientific and unregulated illegal mining.

The Tribunal found the latest report filed by the PCB to be inadequate in light of the judgment[145] of the SC requiring market value of the mineral extracted has been recovered for compensation in accordance with Section 21(5) of the Mines and Minerals Act, 1957, apart from compensation for damage to the environment with deterrence elements. The Tribunal directed the CS, H.P to further look into the matter personally and ensure compliance of law and disposed the matter with liberty to any aggrieved party to take remedy in accordance with law in case of any surviving grievance.

[145] (2017) 9 SCC 499.

69. **Kewal Krishnan v. State of Himachal Pradesh** Original Application 621 of 2022 Sep 30, 2022 ②

stone crushing, water table, multiple fora, vague allegations

This case concerns stone crushing in Haroli, Una, H.P. The petitioner seeks prohibition on stone crushing in this area. According to the petitioner, due to the operation of stone crushers, the water level may get depleted. The cancellation of NOC is pending in the office of SDM Haroli, District Una, H.P.

The Tribunal refused to intervene considering that the petitioner had raised vague grounds that the matter was already pending before the SDM. However the Tribunal directed the SDM to look into the matter and take appropriate action in accordance with the law and disposed of the petitioner without prejudice to the filing of a fresh specific application.

70. **Gurdyal Verma v. State of Himachal Pradesh**

sand mining, protracted litigation, multiple fora, heavy machinery, non-compliance, restoration, environmental compensation, executive inaction, execution of orders

a. **Gurdyal Verma v. State of Himachal Pradesh** Execution Application 21 of 2022 in Original Application 326 of 2013 11 Oct 2022 ④

This case concerns mining activities that are being carried out illegally and harming the environment and nearby places in Suni, Shimla, H.P. The petitioner seeks execution of a 2014 order of the Tribunal by which it had awarded him a compensation of 1.5 Lakh on account of illegal mining without permit, employing heavy machinery in the land of the petitioner, and filing misleading disclosures filed by the private respondent. The Tribunal had also then imposed an environmental compensation of 5 Lakh on the private respondent for carrying out such illegalities and directed the forest department to promptly restore the land of the petitioners.

Although the respondent paid the requisite compensation of 5 Lakh, they failed on multiple occasions to pay 1.5 Lakh to the petitioner as had been directed. The Tribunal had dealt with this non-compliance via orders passed in July, 2015, June, 2017 and March, 2018.

This case involves mining activities that are being carried out illegally and harming the environment and nearby places in Suni,

Shimla, H.P. Additionally, it was claimed that the private respondent was employing JCBs to mine and remove sand for profit in an unauthorized manner. Three JCBs were found by the Police Department during the inspection, however, according to the petitioner, neither the Police Department nor the Forest Department took any action to seize the JCB.

The Tribunal clarified that since the earlier orders passed by it were executable as decree of Civil Court under Section 25 of the NGT Act, a copy thereof may be remitted to the District Judge, Shimla for being assigned to the concerned Civil Court for execution in accordance with Section 25 (2) of the NGT Act, 2010.

b. **Gurdyal Verma v. State of Himachal Pradesh** Execution Application 21 of 2022 in Original Application 326 of 2013 Apr 27, 2023 ④

The petitioner sought restoration of the earlier disposed of execution petition. The Tribunal rejected the application finding no ground to pass an order.



July, 2023 mudslide in Thunag Bazaar © Hindustan Times

71. P **Khushal Singh v. State of Himachal Pradesh** Original Application 428 of 2022 Oct 11, 2022 ②

hydroelectric project, forest area, forest rights, discrepancies in forest rights certificates, multiple fora, explosives, environmental flow, muck

This case concerns unauthorized conversion and allotment of 0.56 hectare of Forest land for installation of a 1.5 MW Micro hydroelectric project in village Surah Tehsil Thunag District Mandi in H.P.

The petitioner alleged illegal manner by which certificates under the Forest Rights Act were obtained by forging[146] the signatures of the local villagers. No action was taken despite complaints made to the concerned authorities. The Sub Divisional Magistrate of Thunag, Manali has ordered for identification of forest land without any jurisdiction. Further, the company concerned is putting the lives of the villagers at risk due to use of explosives.

According to a report filed in the case, due permission was sought for felling trees in forest areas, under the Forest Conservation Act, 1980 and the Forest Rights Act, 2006. The report also pointed out the discrepancies in signatures obtained by the public as part of the permitting process under the Forest Rights Act, and that the issue was being considered by the HC of H.P. The committee recommended measures to ensure environmental flow of the water stream impacted as well as muck management on site.

[146] The act of fraudulently making a false document or altering a real one to be used as if genuine, Black's Law dictionary, 9th Edition.

In view of the pendency of the above said matter regarding issuance of certificate under FRA 2006 before the HC of H.P, the Tribunal refused to further intervene and disposed of the case with liberty to the petitioner to move the HC of H.P by way of appropriate proceedings for appropriate relief, if so desired.

72. P **Yogendra Mohan Sengupta v. Union of India** Original Application 297 of 2022 Oct 14, 2022 ④

urban planning, mountainous area, carrying capacity, protracted litigation, executive overreach, illegality of master plan

This case concerns large-scale ill planning by the TCP with respect to the city of Shimla. Specifically, the publication of the 2041 draft development plan in direct violation of a previous judgment of the Tribunal on the same issue. In its 2017 judgment, the Tribunal had imposed wide-ranging and comprehensive restrictions of development of any kind in the Shimla Planning area, especially in core and forest areas and water bodies therein. It specifically held and declared that:

"*If such unplanned and indiscriminate development is permitted there will be irreparable loss and damage to the environment, ecology and natural resources on the one hand and inevitable disaster on the other.*"

As opposed to these directions, the State of H.P published a draft development plan of 2041 in February, 2022, wherein it effectively acted as an appellate authority over the Tribunal, explicitly "*permitting construction of more floors, new constructions in core area, constructions in green area, permitting development in sinking and sliding area*".

When the case was last heard, the Tribunal expressed its deep anguish on the publication of the draft plan and as an interim measure, restrained the TCP from taking any steps in furtherance thereof, violating which the CS would be held personally accountable. Further, it found the observations and and proposals in the plan to be patently illegal. The Tribunal also sought responses from the State within one month, particularly on the issue of why the prayer of the petitioner to penalize concerned authorities not be granted.

After due consideration of the responses filed, the Tribunal found that there is no jurisdiction with the State to annul or ignore the order of the Tribunal. Any other view will negate the rule of law and defeat the purpose of setting up this Tribunal. State's view is not final in view of overriding provisions of NGT Act by virtue of express provision under section 33. Accordingly, the Tribunal held that the draft development plan, 2041, being in conflict with its judgment is illegal and cannot be given effect. Any action taken in violation of the said judgment cannot be validated by the said plan and will remain illegal.

73. **Chander Mohan Sharma v. State of Himachal Pradesh** Original Application 745 of 2022 Oct 17, 2022 ④

construction in urban area, building height in mountainous area, urban planning, soil stability studies, rainwater harvesting, damage to trees

This case concerns illegal construction in Tuti Khandi, Shimla which the petitioner alleges to be in violation of the Tribunal's 2017 judgment in the *Yogendra Mohan Sengupta* matter. According to the

petitioner, violations include greater height of the building than permitted by the Tribunal and the interim development plan, lack of soil stability studies, lack of rain water harvesting, construction in close proximity to trees and damage to the same, lack of minimum distance between structures of the building and lack of green belt.

The Tribunal referred the matter to the high powered committee constituted by it in its 2017 judgment.

74. **Surjeet Singh v. State of Himachal Pradesh** Original Application 445 of 2022 Oct 17, 2022 ②

tree felling, uprooting, forest area, commercial use and transportation of trees, poaching, monitoring by forest department, environmental compensation, compensatory afforestation

This case concerns illegal cutting/uprooting of thousands of Khair trees from the Rail Beat area mentioned in the letter petition falling in Dada Seeba Forest range, District Kangra, H.P and transportation of the same to other States for sale. According to the petitioner, such a sale is causing huge losses to the state exchequer.

According to a joint committee report filed in the case, the concerned portion of land was opened up for felling and sale in accordance with the felling program of the Dehra Forest Division. However, the report did point towards illegal felling of some trees for which due departmental action was taken. According to the Forest Department, sincere efforts have been made by the staff to check the incident of illicit fellings and poaching. The staff had been conducting regular group patrolling and nakkas to protect the

forest and wildlife from smugglers. According to the MoEFCC, illegal felling had in fact occurred in the region.

In view of the report, the Tribunal disposed of the case with directions to the forest department to take remedial action for prosecution of the offenders, imposition and recovery of environmental compensation and compensatory afforestation for illegal felling for the trees for which action was yet to be taken within three months. The Tribunal also directed the committee constituted to complete its inquiry within three months and file a report within six months. Finally, the forest Department was also directed to encourage by appropriate means for the plantation/compensatory afforestation in non forest/private land in lieu of trees permitted to be felled for protection and improvement of the environment. The Tribunal also gave parties liberty to approach it in case of any surviving grievances.

75. P **Kultar Singh v. Forest Department & Revenue Department**
Original Application 471 of 2022 Nov 10, 2022 ②

encroachment, forest area, multiple fora, compensatory afforestation, cattle, protection of grazing land, high altitude area

This case concerns encroachment of forest lands in Shimla. The petitioner alleged that encroachment removal has been stopped in light of certain orders passed by the Himachal HC and no land was being provided to them for undertaking afforestation by the forest department due to these illegal encroachments.

A committee constituted by the Tribunal found that the Government had found a suitable patch of land for plantation of trees in collaboration with the NGO of the petitioner. However the Tribunal found that a question of permissibility of diversion of grazing land completely for afforestation without permitting its use for grazing of cattle arises. The Deputy Commissioner informed the Tribunal that government land could not be transferred to the petitioner's NGO prior to due permit under the Forest Conservation Act, 1980 although the piece of land in question was suitable for plantation of trees.

In response, the Tribunal observed that even the land situated at an altitude of about 2800 meters above sea level is required to be appropriately reserved for grazing by the animals reared in/habiting in the area. The Tribunal suggested that plantation of native trees may be done in layers on the periphery of the said land to leave adequate space for grazing so as both may go together.

Since the question regarding encroachment was before the HC of H.P, the Tribunal did not intervene further and disposed of the case.

76. **Mohinder Singh v. State of Himachal Pradesh** Original Application 419 of 2022 Nov 10, 2022 ②

construction in urban area, corruption, involvement of executive body, multiple fora, urban planning

This case concerns construction of a six story building in violation of environmental norms at Dharamshala, by an official of the MC, Dharamshala, H.P. The petitioner alleged this officer was indulging in illegal activities of construction, allotments, subletting, issuance of NOCs and cutting of trees, and that he also possessed disproportionate assets.

As per a committee report, no tree felling had been carried out as alleged in the complaint. Part of the constructed portion is unauthorized due to deviation from approved plan regarding which the Dharamshala MC has already initiated action under the H.P MC Act, 1994, issued show cause notice and ordered sealing of the unauthorized/deviated part of the building.

Accordingly the Tribunal deemed that no further action was necessary and disposed of the case.

77. P **Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh** 2022 SCC OnLine NGT 253 Nov 11, 2022 ④

pharmaceutical waste, river, public health, protracted litigation, judicial governance, powers of Tribunal, standards for pharmaceutical waste, sustainable development, implementation and execution of Tribunal's decision

This case concerns a judgment concerning dumping of pharmaceutical waste in rivers by industries in Baddi Industrial Area. In that judgment, the Tribunal had directed the enforcement of draft standards with regard to active pharmaceutical ingredients and other compounds, in light of the alarming state of affairs and risk of resistant pathogens developing due to contact with these effluents. The draft standards developed by the MoEFCC had not yet been finalized due to various issues including market pressures and competition with the Chinese pharmaceutical market.

On the last occasion, the Ministry approached the Tribunal seeking a review of its judgment on the ground that the Tribunal could not have enforced draft standards. The Tribunal rejected the application stating that a rehearing of the matter could not have been permitted based on a review application and more importantly, it had the jurisdiction to enforce principles of sustainable development under law, even if these were beyond decisions made by the Ministry. The Tribunal relied on a 2019 SC judgment to substantiate its reasoning, where its wide ranging powers were upheld by the court.

Now, the petitioner has approached the Tribunal for execution of its judgment considering that non-compliance continues on

ground. The Tribunal directed the MoEFCC and the State PCB to look into the matter and take further remedial measures in accordance with law. If any non-compliance continues, the Tribunal left it open to the petitioner to take remedies under section 30 of the NGT Act for prosecution for offense under section 26 of the NGT Act, 2010 before the concerned Area Magistrate.

78. **Satnam Singh v. State of Himachal Pradesh** Original Application 389 of 2022 Nov 15, 2022 ②

road construction, private forest, multiple fora, grazing land

This case concerns the carving out of a road through private forest land. The petitioner, who is a joint owner of the land in question, alleged that no action has been taken against the co-owner of the land who constructed the road dispute approaching the Forest Department and Civil Court.

According to a committee report filed in the case, no private land of the petitioner has been encroached upon while constructing the road. However, the road has been constructed through the land classified as "Charagah Bila Drakhtan" (grazing land) owned by the Forest department. Further, action with respect to the encroachment is being taken by the Forest Department and the Revenue Department under appropriate provisions of law. Accordingly, the Tribunal disposed of the matter.

79. **Sadhana Devi v. State of Himachal Pradesh** Original Application 637 of 2022 Nov 21, 2022 ②

industrial activity, mining, mine closure plan, stone crusher

This case concerns unauthorized stone crushing activity within the property of the petitioner by its joint-owner without her consent.

As per the response filed by the PCB, the permits granted for mining had expired already and the unit was found to be non-operational on site visits. Accordingly the Tribunal disposed of the matter whilst directing the DM and HPPCB to take all requisite steps for ensuring that no illegal mining takes place in the land in question and the stone crusher is not illegally operated and the mining site is closed/reclaimed as per mining closure plan. It also granted the petitioner liberty to take appropriate remedy with respect to rights claimed by her to the land concerned.

80. P **Vir Singh Rana v. Ministry of Environment, Forest and Climate Change** Original Application 264 of 2022 Nov 30, 2022 ②

tree felling, government residential flat construction, planning, compensatory afforestation, indigenous trees, maintenance of afforested area, injunction on construction, redesigning of public construction

This case concerns felling of trees and risk of damage to a nearby reservoir due to construction of flats for the staff of H.P Service Selection Commission in Jhaniara, Hamirpur, H.P.

The issue framed by the Tribunal was whether unconditional permission for felling of the 150 trees without looking into land use plan and considering compensatory and its status/condition afforestation and whether any water body exists in the land in question could be granted by the Deputy Conservator of Forests, Hamirpur Forest Division.

When the case was last heard, the Tribunal directed the respondents to ensure that there is no further felling of trees and no further construction is raised on the land in question and status quo as to the existing position of the land in question is maintained.

According to a report filed in the case, the land in question is non-forest land which was transferred to HPPSC, Hamirpur under 'allotable pool' for the construction of 'staff residential colony' by the District Collector, Hamirpur after prior issuance of NoC by Forest Department, HPPWD, Jal Shakti Vibhag, BHSEBL, NHAI and concerned gram panchayat. The committee did not find a water body on the land in question. The committee recommended that HPPWD re-design the building plan of the proposed residential colony in a manner that the number of trees required to be felled shall be kept at a minimum. Further, it recommended that the Staff Selection Commission plant ten times the number of trees identified for felling.

The Tribunal reiterated the findings of the committee and directed the Commission to plant indigenous trees and maintain them for a period of seven years to ensure survival. It directed the DFO, Hamirpur to extend necessary assistance in selecting indigenous tree species and undertaking compensatory plantation.

81. **Dr. Gurcharan Singh v. State of Himachal Pradesh** 2023 SCC OnLine NGT 4 Jan 2, 2023 ②

mining, railway, executive inaction

This case concerns illegal mining at village Kotti Khas, near Tunnel No. 10 of Kalka Shimla Railway Track. It is further alleged that the said mining has been carried out for the last four years on National Highway No. 5 and despite several complaints made by the petitioner before concerned mining authorities, police department and state administration, no action has been taken.

The Tribunal constituted a committee comprising State PCB and DM, Solan and directed for remedial action within one month in case of violations.

82. **Ram Singh v. State of Himachal Pradesh** Original Application 173 of 2022 Jan 3, 2023 ②

road construction, high altitude, forest rights, piecemeal clearance, multiple agencies, protracted litigation, compensatory afforestation

This case concerns the construction and widening of an 8 kilometer road from Poh-Maidan to Dhanker in District Lahaul & Spiti, H.P by the PWD. The petitioner alleged that no permits under the Forest Rights Act, 2006 were obtained for the entire stretch of the road, instead obtaining a permit only for a small stretch of the road.

When the case was last considered, the Tribunal sought personal appearance of the Principal Secretary, PWD and Chief Engineer,

PWD, Government of Himachal for just and proper adjudication of the matter. In the meanwhile, a report filed in the matter clarified that approvals granted by DFO (Wild Life) Kaza were for a linear road which were in contravention of The Forest Rights Act, 2006 and a no permit was granted by the PWD for a remaining stretch of the road.

The officers personally present before the Tribunal submitted that appropriate steps will be taken for obtaining approval of Competent Authority under the Forest (Conservation) Act, 1980 and the Forest Rights Act, 2006 as required and providing land for compensatory afforestation in lieu of forest land diverted for non-forest purposes.

The Tribunal disposed of the matter with directions for obtaining requisite permits under the Forest Conservation, Forest Rights and Compensatory Afforestation Acts and submitting an action taken report.

83. **Narayan Singh v. State of Himachal Pradesh** **Original Application 685 of 2022** **Jan 4, 2023** ②

road and tunnel construction, construction waste, muck, stone, debris, river morphology, restoration, remediation[147]

This case concerns dumping construction waste and waste stone debris on the valley side causing damage to the environment and

[147] Remediation of contaminated sites involves cleaning of contaminated media i.e. soils, groundwater, surface water and sediments by adopting various in-situ or ex-situ clean-up technologies up to a predefined remediation target levels for each identified constituent, Central Pollution Control Board.

also creating health hazards to local people in the area in process of road and tunnel construction in Dhalli, Shimla.

When the case was last considered, the Tribunal constituted a committee composed of the state PCB and forest department and sought a report within two months. According to the report filed, there was no apparent violation on the part of the proponent but muck has been stored in private lands without any safety and protection measures.

The Tribunal directed the forest department and State PCB to ensure that the muck does not flow down the valley sides and the same is removed and taken to the identified landfill site for scientific dumping in accordance with the rules and this shall be the obligation of the proponent.

If the proponent failed to take such steps, the Tribunal gave the PCB liberty to make an assessment of environmental compensation and after realizing the compensation, spend the said amount for remediation and restoration.

84. P **Amar Singh v. State of Himachal Pradesh** Original Application 516 of 2022 Jan 4, 2023 ②

helicopter usage, eco-sensitive zone, air and noise pollution, multiple agencies, fora and permits

This case concerns illegal operation of helicopter service by Pinnacle Air in Kullu valley. The petitioner seeks revocation of permits granted to the company for the purpose of landing its vehicles due to air and noise pollution in an eco-sensitive zone.

On consideration, the Tribunal constituted a committee comprising Director General, Directorate General of Civil Aviation, Government of India, Principal Secretary, Department of Tourism and Civil Aviation, Government of H.P, State PCB and Deputy Commissioner, Kullu and sought a report within one month.

According to the report filed, the respondents had obtained all the necessary permissions/clearances from the Directorate General of Civil Aviation, Ministry of Defence, local administration and Government of Himachal and the said companies have not violated any statutory law. Accordingly, the Tribunal disposed of the matter.

85. **Paldan Phunchog v. State of Himachal Pradesh** Original Application 758 of 2022 Jan 4, 2023 ②

solid waste, public health, dumping in river, schools, NIMBY

This case concerns illegal dumping of solid waste in the Gram Panchayat area of Nagger, Post Office Kalath, Tehsil Manali, District Kullu causing health hazards faced by local residents including the students of Saraswati Vidya Mandir, DAV School and Bodh Shiksha Sansthan which are situated in the nearby area.

According to the petitioner, on account of eating of decomposed garbage thrown on open land, the cattle in the area are dying with 40 cattle already dead. Further, the waste thrown in the open is ultimately going/thrown in river Beas causing contamination of water.

The Tribunal constituted a committee comprising State PCB and DM, Kullu, and directed it to take action and submit a report within

two months whilst ensuring that waste processing plant is duly authorized and complying with MSW Rules.

86. **Karan singh v. State of Himachal Pradesh** 2023 SCC OnLine NGT 14 **Jan 5, 2023** ②

solid waste, public health, NIMBY

This case concerns dumping of solid waste causing release of toxic, noxious air and creating health hazards to the residents of Salogra, District Solan, H.P.

Citing a similar case decided earlier, the Tribunal constituted a committee comprising State PCB and DM, Solan and directed it to look into the complaint and if they find any violation i.e. in terms of compliance with MSW Rules and other environmental norms, take remedial and preventive action in accordance with law within two months.



Concretization around trees © Hindustan Times

87. P **Dharmesh Sharma v. State of Himachal Pradesh** Original Application 832 of 2022 Jan 6, 2023 ②

concretization, trees, *stare decisis*

This case concerns concretization of trees at road side and thereby not permitting percolation of water and causing damage to the environment in Sunder Nagar, Mandi, H.P.

The Tribunal cited a report submitted by an expert committee in a case involving a similar issue, where the following was highlighted among other recommendations:

- *area of 1 meter should be left de-concretized around the base of the trees wherever possible while construction of the pavements or roads to facilitate percolation of water to the roots. The area should be leveled with earth/soil and grass may be planted wherever it is possible. It is also suggested to discourage concretization/tiling of the central verge of the roads/pathways,*
- *trees which are already concretized should be deconcretized manually without damaging the roots of the trees*

The Tribunal relied on another case wherein it specifically directed that:

"The concrete surrounding the trees within one meter of the trees are removed forthwith and 4 all the trees are looked after well and due precaution is taken in future so that no concrete or construction or repairing work is done at least within one meter radius of the trunk of trees."

Accordingly, the Tribunal constituted a committee comprising DM, Mandi and District Forest Officer and State PCB and sought remedial action within two months.

88. **Balkrishan Sharma v. State of Himachal Pradesh** 2023 SCC OnLine NGT 18 Jan 6, 2023 ②

solid waste, temple, public health, NIMBY

This case concerns large scale solid waste dumping into a drain located at a distance of 100 meters from a temple at Gram Panchayat Chatradi causing damage to environment and health hazard to local residents.

The Tribunal directed the State PCB and DM, Chamba to look into the grievance and if the complaint is found to be correct, to take remedial and preventive action within two months.

89. **Dr. Sakshi Supehia v. State of Himachal Pradesh** 2023 SCC OnLine NGT 19 Jan 6, 2023 ②

trees, advertising, nails and wires on bark, jurisdiction of Tribunal

This case concerns a grievance regarding advertising via fixing of nails and wires on bark of trees in Sunder Nagar for advertising purposes. The Tribunal rejected the petition having found no question relating to the environment being raised.


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90. P **Dalip Singh v. State of Himachal Pradesh** Jan 6, 2023 2023 SCC OnLine NGT 17 ②

tunneling, tree felling, allied infrastructure, high altitude construction, religious value

This case concerns construction of the Shinkun La tunnel and allied infrastructure by Border Roads Organization, apprehension of cutting of trees and dumping of solid waste in the process at Jispa, H.P. The petition, filed by a large number of villagers from the Gram Sabha also mentions that the trees of this region are worshiped by Buddhists.

The Tribunal rejected the petition having found no illegalities in a report submitted by the authorities on its direction in this case.

91. **Pawan Kumar v. State of Himachal Pradesh** Original Application 514 of 2022 Jan 6, 2023 ②

mining, tree uprooting

This case concerns illegal mining on government land and uprooting of Khair Trees at village Riah, Tehsil Sujanpur, District Hamirpur, H.P by the Pradhan of Gram Panchayat Thana, Dhamriana.

A committee constituted in the case found the allegations made in the petition to be false and accordingly the Tribunal rejected the petition.

92. **Dinesh Kumar v. State of Himachal Pradesh** Original Application 43 of 2023 Mar 3, 2023 ②

mining, executive inaction, tree damage, infrastructure damage, NIMBY

This case concerns illegal mining activities in an unscientific manner at Banaur in District Sirmour. No action had been taken despite complaints made to authorities including the District Mining Officer, Controller of Mines, Vigilance Officer, Indian Bureau of Mines, etc. Unscientific and illegal mining has reportedly caused damage to numerous trees, resulted in cracked land, and put houses and buildings at risk of sustaining damage.

According to the Tribunal, the application required local authorities to investigate, and a joint committee, including State PCB, DFO, Mining Department representative, and DM Sirmour, would visit sites, collect information, and take remedial action within two months.

93. **Gopal Sharma v. State of Himachal Pradesh** Original Application 116 of 2023 Mar 16, 2023 ③

industrial waste, open land, construction

The case concerns discharge of industrial waste by Acme Formulation Ltd. in open and construction of extension at Nalagarh, in violation of environmental norms to the detriment of environment and public health in the area.

The matter required investigation, including disposal mode, consent to operate (CTO), and remedial action by the State PCB and DM. The state PCB was made responsible for coordination and compliance. The application was disposed of by the Tribunal.

94. **Sanjeev Kumar v. Deputy Commissioner, Rupnagar** Original Application 882 of 2022 Mar 17, 2023 ②

tree felling, demarcation of land, revenue record mismanagement, inter-state issue, river bank and soil erosion, dam stability, criminal EL, environmental compensation

This case concerns unlawful felling of trees in a small forest owned and managed by the H.P Forest Department.

The petitioner claimed that land in Nangal Township, owned by the H.P Forest Department, was mistakenly recorded as Makbooja Mehkama Timber Market. The Punjab Government Revenue Department misplaced the record, and locals claimed the land and trees as their own.

In July 2018, 30 trees, including shisham and eucalyptus, were illegally cut by individuals in collusion with Punjab PWD and B & R Br Construction Division. The H.P Forest Department requested a FIR against the involved parties, but the Punjab Police did not register any. According to the petitioner, the destruction of the forest could damage the river bank, increase soil erosion, and threaten the Nangal Dam's stability.

The Tribunal disposed of the petitioner seeking updating of revenue records, demarcation of the land with proper boundary

pillars, and fencing it for protection within three months. Further, the Tribunal directed that Investigations shall be completed and police reports filed in the registered FIR within three months.

The Tribunal also directed that FIRs shall be registered against other individuals found to have engaged in illegal tree felling, and environmental compensation be imposed for those found to have illegally cut trees. The District Administration and Police Department of Rupnagar shall take strict action against defaulters by registering FIRs immediately upon complaint. They will also provide immediate help to H.P forest officials to curb further violations and encroachment activities. No project on the land will be undertaken without prior approval from the Central Government under the Forest Conservation Act, 1980.



Traffic on the way to Rohtang Pass © The Tribune

95. P **Court on its own Motion v. State of Himachal Pradesh** 2023 SCC OnLine NGT 146 Apr 25, 2023 ③

carrying capacity, parking, climate change, glaciers, air pollution, fragile ecosystem, taxi operations, multiple fora, protracted litigation, multiple agencies, tourism, tunneling, vehicle permits

In this case, an application has been filed for modification of the Tribunal's orders dated 9.5.2016 and 30.8.2017, whereby the Tribunal restricted the number of vehicles on the road from Manali to Rohtang pass in H.P, citing adverse impacts on glaciers, air quality, climate change, and fragile ecosystems.

Before the present case, the matter had been dealt with by the H.P HC concerning the pollution and environmental damage caused by 4000 – 5000 vehicles traveling from Manali to Rohtang Pass daily. The HC directed the CS to propose a control mechanism. The case remained pending for three years until it was transferred to the Tribunal for further consideration in 2013.

A report from NEERI, Nagpur, was taken during the proceedings, and regulatory directions were issued to restrict traffic movement. The Tribunal noted that heavy unregulated tourism in Manali, a major tourist destination in the northwestern Himalayas, is causing environmental degradation.

The present application for modification sought increased parking spaces at Gulaba, Marhi, and Rohtang pass due to Atal Tunnel

completion and inadequate vehicle permits due to increased tourism activities.

The Tribunal found that carrying capacity in the area did not allow relaxation, and favorable air quality data does not support the sustainability of increased vehicle use. The opening of the Atal Tunnel or parking space did not change the situation. Accordingly, the tribunal dismissed the case.

96. **Joginder Singh v. State of Himachal Pradesh** Miscellaneous Application 32 of 2023 in Original Application 863 of 2022 Apr 26, 2023 ③

stone crusher, air pollution, non-compliance with permit conditions, polluter pays principle

This case concerns a grievance against the illegal operation of a stone crusher in District Una, H.P, resulting in pollution.

A report filed in the case acknowledged the illegalities and recommended corrective measures. The Tribunal noted that the unit was non-compliant with the dust suppression system requirement and that it was unclear whether it had the necessary CTO under the Air Act. The Tribunal directed the PCB and DM Una to oversee compliance, and if violations persist beyond the allotted period, closure may be considered. Accountability for prior violations will be remedied using the polluter pays principle. The Tribunal accordingly disposed of the case.

97. **Meera Thakur v. State of Himachal Pradesh** Original Application 363 of 2023 May 29, 2023 ②

hydroelectric project, muck dumping, tunneling, forest area

This case concerns tunnel construction between Marola and Chintala village which is polluting the river Satluj and damaging the forest due to the disposal of muck. According to the petitioner, the Sunni Dam Hydroelectric Project, Tehsil Sunni, District Shimla, State of H.P, is carrying out the aforementioned operations.

The formed a Joint Committee with the H.P PCB and District Forest Officer Shimla and directed it to collect relevant information and take appropriate remedial and preventive action within two months.

98. **Raj Dogra v. State of Himachal Pradesh** Original Application 348 of 2023 May 29, 2023 ②

estate construction, limitation, tree felling

The grievance in this case is that two 12 year old green trees of Deodar have been illegally chopped down during development of a project near 103 tunnel, Shimla. The complaint further alleges that building work was completed in 2014.

The Tribunal found that the cause of action appears to be barred by limitation considering how old the issue raised was. However, the Tribunal noted that if the petitioner has any alternative legal

remedy, he is free to pursue it, and with these observations, it denied the petition on the basis of limitation.

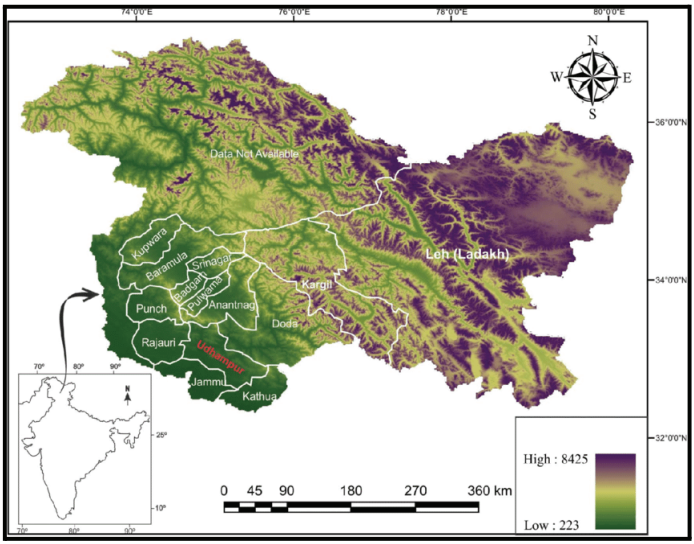
99. **Prithvi Singh v. State of Himachal Pradesh** Original Application 384 of 2023 May 30, 2023 ②

hazardous waste, NIMBY, open land, environmental compensation

This case concerns discharge of dangerous chemicals onto the petitioners' property by an industrial unit at Kala Amb, Tehsil Nahan, District Sirmour, H.P. According to the petitioner, the plant is discharging poisonous and hazardous chemicals causing damage to his land and degradation of the environment.

The Tribunal directed a joint committee comprising the PCB and DM, Sirmour to collect information, take remedial and preventive action, and assess compensation within two months.

Union Territories of Jammu & Kashmir and Ladakh



Overview

Jammu and Kashmir & Ladakh ("JKL") presents a turbulent ground for HEL to develop and operate due to obvious **national security** reasons. The region is one of the most militarized on the planet. However, it has largely been at peace since the February, 2021 Indo-Pakistan ceasefire agreement, at least in the Kashmir valley if not at the Line of Actual Control with China in Ladakh. It is perhaps this context, found in no other mountainous region in the world, that jurisprudence arising from JKL is so important to study and learn from.

With comparatively fewer cases (13) JKL, nevertheless proved instructive when it comes to issues arising from increasing pilgrimage to places of religious significance[148], industrial proliferation[149], tourism & recreation[150] and urbanization[151]. All but one case arose from the Jammu & Kashmir region, despite serious environmental issues existing in Ladakh.

[148] *See* Joginder Singh Thakur v. Union Territory of Jammu & Kashmir Original Application 481 of 2022, Gauri Maulekhi v. State of Jammu & Kashmir Original Application 473 of 2015 and Brinda Mishra v. Union Territory of Jammu & Kashmir 2022 SCC OnLine NGT 268.

[149] *See* Kua v. Union of India Original Application 796 of 2022, Harmeet Singh v. Union Territory of Jammu & Kashmir Original Application 309 of 2023 and Raza Muzaffar Bhat v. State Environment Impact Assessment Authority, Jammu & Kashmir Appeal 24 of 2022.

[150] *See* Sajad Rasool v. Union Territory of Jammu & Kashmir Original Application 63 of 2022 and Mushtaq Ahmad Malik v. Ministry of Environment, Forests & Climate Change Original Application 287 of 2023.

[151] *See* Himanshu Sharma v. Union Territory of Jammu & Kashmir 2023 SCC OnLine NGT 174 and In re: Article published in Stawa Magazine titled "Water in Ladakh: Elixir or Poison?" Original Application 206 of 2023.

Environmental concerns were triggered by extensive **mining** activities happening along the Hokersar wetland[152] and Tawi river[153] and continuing waste mismanagement on the Indus basin. Recreational activities such as adventure sports linked to adverse impacts - specifically on remote[154], sensitive environments[155] also constituted a significant portion of the matters taken up. Many of these issues have been recurring as part of protracted litigation cycles, partly due to inefficient operation of agencies such as the Pollution Control Committee and intervention from the higher judiciary. For instance, in the *Gauri Maulekhi* case, the Tribunal had issued a penalty on the State for repeated non-compliance. However, the SC ultimately restrained it from further adjudication in the case.

With regard to industrial operations in the region, the process followed by agencies to issue and renew mining permits was put under scrutiny, with the Tribunal emphasizing on the need for district level mining surveys in the *Raza Muzaffar Bhat* case. In another case, the Tribunal sought reassessment of environmental compensation to be imposed on a stone crusher unit based on a more holistic assessment of factors such as loss to environment, deterrence, value of minerals mined and the financial capacity of the project proponent. However, when it came to balancing lapses in processes leading up to grant of permits and

[152] Lalgam, Chadoora tehsil of Budgam district; See Raza Muzaffar Bhat v. State Environment Impact Assessment Authority, Jammu & Kashmir Appeal 24 of 2022.

[153] Saranoo tehsil, Rajouri district; *See* Arti Sharma (Sarpanch) v. State of Jammu & Kashmir Original Application 137 of 2021.

[154] Use of green pastures across the state for heavy sports vehicles, *See* Sajad Rasool v. Union Territory of Jammu & Kashmir Original Application 63 of 2022.

[155] Gulmarg Wildlife Sanctuary in Mushtaq Ahmad Malik v. Ministry of Environment, Forests & Climate Change Original Application 287 of 2023.

national security (road connectivity for the army), the Tribunal sided with the latter. In the wake of the discovery of Lithium deposits at Reasi, it has been reassuring to see mining jurisprudence develop in JKL.

The sheer width of its impact on the environment was captured in the spectrum of cases addressed by the Tribunal, especially considering the pace at which **tourism** is unfolding (nearly 50 lakhs since Jan 2023[156], and 1.88 crore tourist footfall in 2021-22[157]) in the region. It is perhaps because of the relative peace in the valley the government is looking to tap further into this sector[158].

While issues related to construction of unplanned hard infrastructure such as highways and dams are already familiar when we consider HEL, cases before the Tribunal brought up emerging areas of concern such as sporting routes cutting across the Himalayas and installation of **temporary infrastructure** such as tents. In such situations, arrangements were made (and justified[159]) without adhering to norms applicable to that of permanent infrastructure on the grounds that such installations are temporary. Litigation from JKL and UK shows that such issues of temporary infrastructure is emergent and requires stringent regulation[160].

[156] Source: "4 lakh tourists visited Jammu every month in 2023 so far"; CNBC TV18, Jul 17, 2023.

[157] Source: "Jammu & Kashmir saw 14.64% economic growth; 1.88 crore tourist footfall in 2021-22: L-G Manoj Sinha"; *The Hindu,* Mar 29, 2023.

[158] Source: "J&K eyes 10-15% growth in tourist footfalls in 2023; opens 75 new destinations"; The Economic Times, Feb 4, 2023.

[159] *See* Brinda Mishra v. Union Territory of Jammu and Kashmir Original Application 567 of 2022.

[160] *See* Ram Singh v. State of Uttarakhand, Original Application 578 of 2022.

JKL forms both a geographical and conceptual frontier for HEL, with judicial bodies such as the Tribunal having to consider additional factors such as national security[161], otherwise extraneous to environmental litigation in mainland India. However, the immediate, often stop gap measures taken by the Tribunal to remedy environmental issues in JKL leaves much to be desired.

[161] *See* for instance, Kua v. Union of India Original Application 796 of 2022 where the question of a hot mix plant for the purpose of army movement came up.



Tosa Maidan

100. P **Sajad Rasool v. Union Territory of Jammu & Kashmir** Original Application 63 of 2022 Jul 5, 2022 ③

sporting routes in the Himalayas, vehicular movement in high altitude regions, threat to grasslands/ pastures, tourist movement

This case concerns the use of green pastures of Nagin Valley, Gulmarg, Tosamaidan, Doodhpathri, Drung etc., by heavy vehicles for sport, by a Federation of Motor Sports of India group called "Kashmir Off Road". The petitioner alleged that the movement of heavy vehicles in these areas is disturbing flora, fauna of the area and also causing noise and air pollution. Via an earlier order, the Tribunal had sought a factual report from a committee consisting of the PCB, forest and tourism departments and the concerned DM.

According to the report filed, vehicular movement or disturbance to flora and fauna of concerned areas was not found. Further, the report stated that the forest department had taken adequate measures including demarcating and fencing off sensitive areas and undertaking afforestation. The committee recommended strict regulation of tourism activities and vehicular movement in green Pasture areas of Nagin Valley, Gulmarg, Tosamaidan, Doodhpatri and Drung. The committee also recommended *that no vehicular movement be allowed in these green pastures and suitable mechanisms and manpower be put in place for enforcement*.

Accordingly, the Tribunal directed for further remedial action may be taken by the statutory regulators, including the State PCB, Forest Department and Tourism Department, J&K.

101. P **Rajesh Kumar v. Union Territory of Jammu & Kashmir**
Miscellaneous Application 59 of 2022 in Original Application 344 of 2022 Aug 23, 2022 ②

solid waste mismanagement, bio-medical waste disposal, non-compliance

This case concerns dumping of waste (dry and wet) into the street, roads and vacant land of Jammu city during night causing spread of diseases in Jammu and damaging the environment.

According to a committee report filed by the Member Secretary, J&K PCC, out of 43 hospitals, varying degrees of action ranging from closure to notices were taken against some units. The report pointed towards a large number of hospitals whose permits for operating were currently being considered for renewal. Since none appeared for the petitioner, the Tribunal accepted the report stressing on the need for evolving proper monitoring mechanism by the State PCB for periodically ascertaining compliance status of the Bio-medical Waste Management Rules and taking appropriate remedial action to plug in the gaps and resolve the bottlenecks so that strict compliance therewith is ensured.

102. P **Raza Muzaffar Bhat v. State Environment Impact Assessment Authority, Jammu & Kashmir** Appeal 24 of 2022 Sep 28, 2022 ②

mining permits, siting violations, threats to wetlands, use of heavy machinery/ transport vehicles

This case concerns a permit granted for mineral mining at Lalgam, Tehsil Chadoora, District Budgam, in favor of a Gurugram based company.

The petitioner alleged that the permit has been issued in violation of the Jammu and Kashmir Minor Mineral Concession, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016, which prohibit mining within 25 meters from embankment (in this case, with respect to the Hokersar wetland). The petitioner further alleged that the mining site is already unfit for mining and this will result in disruption of flow of the Hokersar Wetland.

When the case was last heard, the tribunal noted that the permit was granted without any replenishment study and therefore, in violation of Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020. Therefore, the tribunal ordered that no further mining activities pursuant to the permit should be allowed, and posted the matter for further consideration, seeking the response of the company and SEIAA within one month.

The issues formulated by the Tribunal were as follows:

1. Whether the provisions of EIA 2006 have been violated for granting permits dated challenged in this Appeal? If so, its effect,

2. Whether provisions of Enforcement & Monitoring Guidelines for Sand Mining 2020 and Sustainable Sand Mining Management Guidelines, 2016 have been violated? If so, its effect,

3. Whether the provisions of J&K Minor Mineral Rules, 2016 have been violated? and

4. Whether mining operations conducted by proponents are in violation of the conditions of EC?

The Tribunal considered the first two issues together since it found them to be connected. Tracing the lineage of the EIA Notification, 2006, Office Memorandums issued thereunder and a catena of judgments on the issue of environment protection and sustainable development, the Tribunal found that:

"*Under EIA 2006 as amended by notifications dated 15.01.2016 and 25.07.2018, there is no exception in respect of preparation of DSR and the same thing has been reiterated in SSMG-2016 and EMGSM-2020. ...*

Non-preparation of DSR as per guidelines and absence of replenishment study is a fact which has not been disputed before us ..."

And resolved the issues in favor of the petitioner.

With respect to the third issue, the Tribunal found that nowhere in the permit was it clear that the site in question was located in violation of the minimum 10 meters from the embankment of the waterbody.

With respect to the fourth issue, the Tribunal found that the project proponent did indeed use heavy machinery for moving heavy boulders which was in violation of one of the conditions of the permit and resolved the issue in favor of the petitioner. For violation of the permit, the Tribunal directed the J&K PCB to take action against the project proponent but made it clear that such violations would not vitiate the permit in and of themselves. However, taking into account the findings on the first two issues and the lack of any proper study leading up to the mining permit, the Tribunal set aside the same.

The Tribunal also restrained the project proponent from carrying on any mining activities pursuant to impugned ECs and directed the J&K PCC and DM Budgam to ensure compliance of this direction.

103. **Amit Kumar v. Union Territory of Jammu & Kashmir** Original Application 682 of 2022 Oct 31, 2022 ②

misuse of CAMPA funds, non-compliance

This case concerns misuse of CAMPA funds and noncompliance of SC orders in the State of Jammu and Kashmir. The Tribunal found the grievance to be beyond its jurisdiction. It clarified that if there is any grievance with regard to violation of SC orders and misuse of CAMPA funds, the remedy lies elsewhere.

104. P **Arti Sharma (Sarpanch) v. State of Jammu & Kashmir** Original Application 137 of 2021 Nov 23, 2022 ③

stone crusher, illegal extraction of groundwater, pollution in mining areas, mining operations close to residential area, siting criteria, environmental compensation, restoration

This case concerns operation of stone crushing units near the Tawi river in Saranoo Tehsil, District Rajouri, Jammu & Kashmir. The petitioner raised issues of illegal borewells being used to extract groundwater, mining on the bank of Tawi, crushing activities close to residential areas, and air pollution due to vehicles transporting mined material. She also raised issues of lack of pollution control equipment such as green belts, and monitoring by the PCB despite specific guidelines regarding stone crushing being in place for Jammu & Kashmir.

When the case was last considered, the Tribunal had directed that till stone crushers in question provide requisite pollution prevention and control systems, they may not be permitted to operate. In the meanwhile, the impacted stone crusher units moved in appeal to the SC where the court gave them liberty to move the NGT for modification of the impugned order since no notice was issued before the impugned order was passed. However, since no such application was made by the units, the Tribunal proceeded without their participation.

The monitoring committee found that the interim order of the Tribunal with respect to closure of non-complying units had not

been strictly implemented. Further the setting up of new stone crushers in Jammu & Kashmir during the last over a decade remains prone to a fundamental drawback across the board, due to the failure of J&K PCC to prescribe fresh siting criteria even long after expiry of the earlier criteria.

The committee went on to recommend that directions be issued to the J&K PCC to notify the fresh criteria without any further delay in a manner that new and modern time challenges to environment protection and safety are sufficiently met with.

Based on the report of the committee, the Tribunal made its interim order final and directed that units be only allowed to operate after complete compliance.

However, the Tribunal noted that as regards compensation, the existing formula prescribed by the CPCB was not adequate. This was since it was a floor level formula requiring adjustment on the basis of a holistic assessment of factors such as loss to environment, deterrence, value of minerals mined and the financial capacity of the project proponent.

The Tribunal instead sought reassessment of compensation on the basis of financial capacity of the violating units, as an interim arrangement and imposed a compensation of 7 crores on each violating unit and directed the State PCB and the DM to ascertain the status of illegal extraction of groundwater, if any, and take remedial action. It directed that compensation may be used for restoration of the environment by preparing an action plan by

CPCB, State PCB and DM within one month and units be allowed to operate only after compliance.



Tents en route Amarnath © Daily Excelsior

105. **Brinda Mishra v. Union Territory of Jammu & Kashmir** 2022 SCC OnLine NGT 268 Dec 7, 2022 ③

pilgrimage site, temporary accommodation, loss of life, use of river beds, carrying capacity, temporary infrastructure, flood, multiple agencies

This application raised the issue of violation of environmental and safety norms in setting up tents for pilgrims in the dry river bed near holy cave, Amarnath, J&K. The application cited an accident which happened following a flash flood in July 2022, where 16 persons died. The application called for the river bed and flood plain to be kept free for environmental functions and to avert accidents.

The Tribunal sought response(s) from the CS, J&K and from J&K Pollution Control Committee (PCC). The response refuted claims that tents and community kitchen were set up on the river bed, and affirmed that all establishments were erected as per the approved comprehensive layout plan of Shri Amarnathji Shrine Board. The response also detailed out the strategies and measures undertaken to handle carrying capacity across different camps. It noted that despite significant flood protection/ mitigation works undertaken during preparations, the volume of water flow during the flood was much higher than anticipated. It stated that the high degree slope resulted in high speed of the water flowing with boulders and debris, thus becoming the main reason for loss of human life. The response elaborated on the infrastructure put in place to handle the

volume of tourists. It was added that Surveyor General of lndia has been approached for making contour maps of the upper reaches of the Holy cave and catchment areas of the waterways. The response also clarified that no EC is required for setting up of Tents & Langars along the tracks of Amarnathji Shrine, as it is all temporary infrastructure, established to cater to the basic needs of pilgrims and that there is no specific violation of environmental norms.

The Tribunal concluded that given the significance of the yatra and the scale of pilgrims undertaking it, safeguards were necessary for the safety of pilgrims and protection of the environment. The Tribunal called for augmentation of infrastructure apart from preventive measures. In addition, the Tribunal directed that all activities and arrangements, as far as possible, should be situated at a distance from the river bed in the interest of 'the safety of the visitors as well as the environment' and disposed of the case.

106. P **Kua v. Union of India** Original Application 796 of 2022

Dec 19, 2022 ②

operation of hot mix plant, damage to crop and cattle, due process, health hazards to local population, schools, NIMBY

This case concerns a hot mix plant which has been permitted at Sonbar Barhog without conducting a spot inspection and in violation of the rules framed by the Government for the installation of Hot Mix Plant. According to the petitioner, Government schools as well as centers are situated at a distance of approximately 300 meters from the place wherein the Hot Mix Plant has been installed. Running of the Hot Mix Plant is causing air, noise and

water pollution posing serious health risks to the residents of the village and to the livestock.

The Tribunal had sought responses from the parties within a week. According to the report filed by the JKPCC, "*there are 30-40 scattered house/ structures within 500 meters at relatively higher/ lower elevations and most of these are not visible from the site being the mountainous/ hilly area and Hot Mix Plant is made operational during day time only and for limited period*".

The private respondents claimed to have complied with all environmental norms. The issue of the necessity of hot mix operations for movement of the army from Ramban to Gool also came up. The respondents raised the issue of frivolous litigation before the Tribunal without first approaching the Jammu & Kashmir PCC and despite unfavorable orders (see also) from the HC at Jammu.

According to the Tribunal, since the unit in question had been getting its permits renewed since 2013, a challenge to siting and setting up of the Hot Mix Plant as being violative of the prescribed procedure/environmental norms was time barred. The Tribunal refused to take any coercive action considering also the need for hot mix operations for army and public interest purposes, the relatively few number of days that the unit was operational throughout the year and the amount of precautionary measures taken already. However, in the interest of local residents and for ensuring a clean and healthy environment the Tribunal directed the respondent to take appropriate steps to install a suitable filter in the chimney of the Hot Mix Plant to further minimize emission.

107. P **Gauri Maulekhi v. State of Jammu & Kashmir** Original Application 473 of 2015 Dec 19, 2022 ③

animal cruelty, tourist movement, modes of transport in the Himalayas, animal cruelty, declaration of silence zones, non-compliance, protracted litigation, multiple fora

This case concerns violation of environmental norms in permitting use of equines (including horses, ponies, mules and donkeys) in the region of Shri Mata Vaishno Devi Shrine in J&K.

At an earlier occasion in 2017[162] (see also), the Tribunal had passed comprehensive directions in relation to finalization of a rehabilitation plan in relation to horses and mules. The Tribunal also passed various directions applicable to the Amarnath shrine pilgrimage including the need for a one way queue to the shrine, frisking in order to reduce any articles which may reach the shrine and maintenance of silence via a zone. Even up till early 2018, the directions with respect to finalization of the rehabilitation plan were not complied with. The Tribunal directed the CS of Jammu & Kashmir to explain the delay. However, in the face of continuing non-compliance, the Tribunal imposed a penalty of 50 L on the state administration with directions for urgent compliance with its earlier directions.

However, the SC restrained (see also) the Tribunal from passing any further directions pending its own examination of the issues. The orders passed by the Tribunal were eventually set aside by the SC. Considering this backdrop, the Tribunal did not interfere any

[162] *See also* orders dated 13.12.2017 and 14.12.2017.

further and disposed of the cases before granting liberty to the petitioner to approach it as applicable in the future.

Month of April, 2023 (2)

108. **In re: Article published in Stawa Magazine titled "Water in Ladakh: Elixir or Poison?" Original Application 206 of 2023**
Apr 6, 2023 ③

scientific management of solid and liquid waste, sewage treatment plants (STPs), sewage treatment, sewage system, treated water, wastewater disposal

The Tribunal began these proceedings based on a media report about water pollution in Ladakh. A similar matter is being considered in respect of Ladakh, dealing with the issue of scientific management of solid and liquid waste in Ladakh. Considering the directions issued in that case, which include directions for requiring all commercial units in Ladakh to set up their own decentralized STPs and to utilize treated water for gardening and other non-contact purposes, the Tribunal directed further remedial measures in this case and disposed of the application.

Related cases: Paryavaran Suraksha vs. Union of India and Almitra H. Patel vs. Union of India & Ors

Relevant laws: Solid Waste Management - Policy, Strategy & Action Plan for Union Territory of Ladakh, 2022



Gulmarg © Conde Nast

109. P ⑤ **Mushtaq Ahmad Malik v. Ministry of Environment, Forests & Climate Change** Original Application 287 of 2023 Apr 20, 2023

eco-sensitive zones, PAs, encroachment, loss of grasslands, use of snowbikes, sporting routes in the Himalayas, multiple agencies, climate change

This case concerns use of snow bikes in and around the Gulmarg Wildlife Sanctuary and ESZ in terms of notification dated 7.6.2021 issued by the MoEFCC under the EP Act, 1986.

According to the petitioner, snow bikes use petrol which has a harmful impact on the ecology. Weight of the bikes impacts the soil and the vegetation underneath the snow. Such activities also result in encroachments and loss of grasslands.

The petitioner relied on Notification dated 7.6.2021 whereby an area of 62.2 square km around the sanctuary is proposed to be notified as ESZ. The petitioner also relied on a letter dated 21.02.2023 of Wildlife Range Gulmarg addressed to the Director Tourism, Srinagar on the subject of unauthorized plying of Snow bikes in Gulmarg Wildlife Sanctuary at Kangdori Gulmarg.

The Tribunal directed the Additional CS, Forest and Environment, Government of J & K to take remedial action in accordance with law and disposed of the case.

Month of May, 2023 (3)

110. **Joginder Singh Thakur v. Union Territory of Jammu & Kashmir**
Original Application 481 of 2022 May 8, 2023 ②

use of single use plastic, plastic waste disposal, events in remote areas, tourism in forest area, ban on plastics, plastic waste management

This case concerns the ban on single-use plastic in religious places in Bhaderwah. The petitioner had submitted that in the month of April, local people hold events in Chenab Valley, particularly Bhaderwah, causing thousands of single-use plastic bottles to be thrown away due to water shortages. The lack of authority to collect and dispose of these bottles poses a threat to green meadows, cattle, and the environment.

According to the responses (see also) submitted, the Bhaderwah Development Authority had constituted a committee consisting of BDA officers and officials to work with the administration to maintain environmental cleanliness with attention to collection and disposal of plastics and cleanliness drives.

Further, a meeting was held to implement the Plastic Waste Management Rules 2016 in a coordinated manner. The meeting involved stakeholders such as the Additional Deputy Commissioner, Bhaderwah Development Authority, Divisional Forest Officers, Tehsildar Bhaderwah, Block Development Officers, and President Sanatan Dharam Sabha.

The Forest Department established two temporary check posts at Roshra Mata Temple to check single-use plastic entry. The collected waste was then handed over to the Bhaderwah Municipal Committee for scientific disposal. Temporary check posts will be established in all religious yatras and melas to prevent the illegal entry of plastic or single use plastic into forest areas. The Forest Department has also conducted plastic-free drives at Guldanda, Padhri, Jai Valley (Meadows), and Kellani Park in collaboration with the Bhaderwah Development Authority, MC, NGOs, and students.

The Tribunal accepted the Joint Committee's report and directed the District Administration, Forest Department, Bhaderwah Development Authority, and Municipal Committee to comply with the recommendations and suggestions made by the committee. They were also directed to ensure strict implementation of the Plastic Waste Management Rules, 2016, as amended, and manage and dispose of plastic waste in accordance with the rules.

See also: Ban on identified Single Use Plastic Items (SUPs)

111. **Himanshu Sharma v. Union Territory of Jammu & Kashmir** 2023 SCC OnLine NGT 174 May 10, 2023 ③

effluent discharge, dumping of garbage, improper waste disposal, river pollution, water pollution, pollution prevention, non-compliance, protracted litigation, multiple agencies

The matter is taken up following submission of compliance status report as per orders issued after consideration and disposal of the original application in August 2022.

In the original application, grievances had been raised against concerned authorities for their failure to prevent pollution of the Ban Ganga river stretch at Katra. It was stated that discharge of effluents and dumping of garbage had polluted the river, a source of drinking water for local inhabitants. The application claimed that violations had taken place under;

(i) Water (Prevention and Control of Pollution) Act of 1974,

(ii) the Air (Prevention and Control of Pollution) Act of 1981, and

(iii) the Environment (Protection) Act of 1986.

The Tribunal had sought a factual and action taken report from the State PCB and the Municipal Council, Katra. The subsequent report (see also) filed by the State PCB acknowledged the said violations and piled up garbage and discharge of untreated municipal waste in the river, and that the situation required undertaking remedial action. The Tribunal also considered the report of the Municipal Council, Katra covering remedial measures and report of the Urban Environmental Engineering (UEE) Department providing details on the status of a project for which DPR was appraised by the IIT, Roorkee with approval pending.

Dissatisfied by the state of affairs, the Tribunal had directed remedial action by the concerned authorities, to be overseen by the Secretary, Housing and Urban Development Department (HUDD) and the State PCB, J&K. The Tribunal had further directed the filing of a further action taken report.

The Tribunal found from the report of the Housing and Urban Development Department that waste processing facilities for solid

waste are not operational, legacy waste is not remediated, and sewage treatment facilities are not planned and sought additional status reports whilst disposing the case.

Related case: Raja Muzaffar Bhat v. Union Territory of Jammu & Kashmir (Lack of remedial action by authorities)

112. **Harmeet Singh v. Union Territory of Jammu & Kashmir** **Original Application 309 of 2023** **May 26, 2023** ②

illegal operation, stone crusher, hot and wet mixing plant, environmental degradation, health hazards to local population, mineral-based, processing unit

This case concerns illegal operation of a stone crusher adjacent to Rajouri-Kalakote Highway at village Saranoo. The letter petition received from residents of Mohalla Road side of Saranoo, based on which the original application was registered[163], raised issues of environmental degradation and health hazards to the local population.

The Tribunal stated its view that the issues raised in the application could be looked into by the local authorities.

In accordance with this, the Tribunal constituted a Joint Committee comprising J&K Pollution Control Committee (JKPCC) and the DM of Rajouri. The responsibilities of this committee were (i) to look into the matter (iii) collect relevant information and (iii) on finding any violation, to take appropriate *remedial* and *preventive* action as

[163] Registered under Section 14 - Tribunal to settle disputes and Section 15 - Relief, compensation and restitution (Refer Chapter III titled *Jurisdiction, Powers and Proceedings of the Tribunal* of the NGT Act, 2010).

per law, within two months. It further directed the said Committee to file a copy of the action taken report before its Registrar General on execution of the above directions. The Tribunal allowed for the matter to be placed before the Bench if the Registrar found necessity for additional orders.

Relevant laws: Jammu and Kashmir Stone Crushers/ Hot and Wet Mixing Plants Regulation Rules, 2021 recognise a stone crusher/ hot and wet mixing plant as a mineral-based (raw material) processing unit[164] i.e. different from a unit indulged in mineral mining activity.[165]

[164] Section 2. Definitions.
(v) "Stone Crusher Unit/Hot and Wet Mixing plant" means the industrial units/plants/crushers installed or established for the processing of the Minor Minerals into value added/ finished products ;
(vi) "Processing" means all physical processes such as grading, washing, crushing, pulverization, calcinations, powdering, cutting and polishing of Minor Minerals.

[165] Section 3. General Requirements.—
(1) A Stone Crusher/Hot and Wet Mixing Plant is not a mining unit but a processor of minerals obtained from a source with a valid mineral concession. Such units shall be regulated by laws, rules and other provisions applicable to industrial units.
(2) No permission/license would be needed by a Stone Crusher/Hot and Wet Mixing Plant from the Mining Department except where it also engages in mining, which activity shall be regulated by laws/rules applicable to mining.

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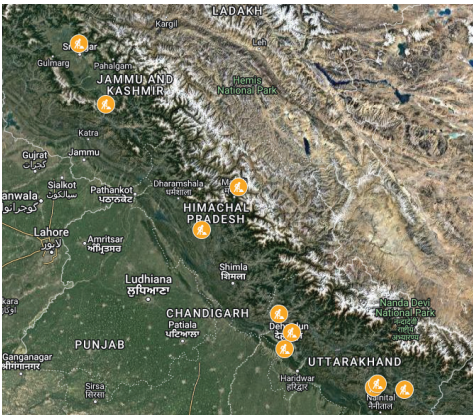
Introduction

Perhaps most crucial to contemporary Indian democracy are her temples of justice, the constitutional courts. And yet, the concrete jungles built over the increasingly unstable slopes of Shimla made it impossible for one such temple, the High Court of H.P to be rebuilt. In its landmark 2017 judgment in *Yogindra Mohan Sengupta v. Union of India*, the NGT warned of a '*terrible loss of person, property and natural resources of Shimla*' but for the most stringent adherence to EL. That judgment is one of the few of such import, that still hold ground in the Tribunal's jurisprudence[166].

In a pending matter, the Tribunal finds itself considering an absurd situation - that of the State of H.P effectively sitting in appeal over the Tribunal's judgment in *Yogindra Mohan Sengupta*[167], by encouraging large scale construction in the 2041 master plan of Shimla - and possibly the unimaginable loss of life which would follow, in the event an earthquake occurs.

[166] Others of significance have been S.P Muthuraman v. Union of India, 2015 SCC OnLine NGT 169, Himmat Singh Shekhawat v. State of Rajasthan, 2015 SCC OnLine NGT 846 and Sreeranganathan K.P. v. Union of India, 2014 SCC OnLine NGT 15.

[167] Yogendra Mohan Sengupta v. Union of India, Original Application 297 of 2022, Order dated 12th May, 2022.



Indicative locations of areas from where road construction issues arose before the NGT

To state that the Tribunal is discharging an unpopular function is to state the bare minimum. The declared policy priority of the NHAI has been to develop an extensive network of highways crossing across the Western Himalayas, to bring in tourism and secure India's defense requirements. And yet those very highways have a devastating impact on commerce, human and non-human life, and the ecology of the Himalayas. This past year, the Tribunal considered various such cases - from the National Highway 44 connecting Udhampur to Banihal[168] to National Highway 72A connecting Ganeshpur and Dehradun[169]. In the latter, we witness an illuminating back and forth between the SC and Tribunal, on a Section 16 issue concerning the appropriate stage at which a government decision may be challenged under the NGT Act,

[168] Amresh Singh v. Union of India, 2021 SCC OnLine NGT 274.

[169] Citizens for Green Doon v. Union of India, 2021 SCC OnLine NGT 326.

2010[170]. The former is an ideal case study for the consequences that unfettered development and financial mismanagement may have on slope stability and the rule of law.

With development comes waste of all kinds. From pharmaceutical and biomedical to plastic and construction waste. The Tribunal considered a substantial number of such cases, impacting some of our most pristine wetlands (such as the Wular) and rivers, including the Khoh[171], Tirthan[172] and Sutlej[173].

A striking reminder of the consequences of such waste finding its way into rivers was the *Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh*[174] case, which brought up the issue of 'antimicrobial Resistance', in what may be called factual and dystopian in equal measure - the creation of medicine resistant microorganisms. Of note is the affidavit of the MoEFCC here, citing India's need to effectively compete with the Chinese pharmaceutical manufacturing market, also recently emphasized by the Minister of External Affairs on the issue of national security. Such was the degree of pollution, that the Tribunal was constrained to give effect to standards on 'bulk drugs' yet to be finalized by the MoEFCC, a situation having its own bearing on the separation of powers between judiciary and executive.

[170] Citizens for Green Doon v. Union of India, 2021 SCC OnLine SC 1074 at paragraph 8.

[171] Arvind Baniyal v. State of Uttarakhand, Original Application 144 of 2019, Order dated 7th October, 2021.

[172] Ashish Shaunik v. State of Himachal Pradesh, 2021 SCC OnLine NGT.

[173] Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh, Original Application 136 of 2020, Order dated 6th April, 2022.

[174] *Ibid.*

It is becoming clear that the NGT may no longer be considered as a body solely adjudicating Section 14, 15 and 16 matters[175] - provisions requiring minimum thresholds of specificity in terms of limitation period, nature of executive action questioned, factual matrix and such. The SC has made this abundantly clear in its recent judgments on the Tribunal's *suo motu* powers to tackle environmental issues[176]. The Tribunal is charged with effectuating both Article 21 and India's commitments made in the Stockholm and Rio conventions[177]. This brought up a host of larger, ostensibly pure policy centric issues of tourism[178], forest fires[179] and ecologically sensitive areas[180]. Conspicuous by its absence here was the issue of climate change. The Tribunal passed important directions on each of these issues without having a specific fact situation brought before it, via an Original Application or Appeal. This is of course not to say that the Tribunal did not consider various specific issues passing standalone orders shedding light on its jurisprudence concerning the Western Himalayas. Although one year is far too less to draw definitive trends, it is heartening to observe the

[175] *See* National Green Tribunal Act, 2010 ("NGT Act").

[176] Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897 at paragraphs 51-75.

[177] *Id.* at paragraph 43. *See also* Mantri Techzone (P) Ltd. v. Forward Foundation, (2019) 18 SCC 494 and NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566.

[178] In re : News item published in The Hindu dated 27.02.2022 titled "Tourism has brought economic prosperity to the Himalayan region, but the environmental cost has been catastrophic", 2022 SCC OnLine NGT 87.

[179] In re : News item published in Hindustan dated 21.04.2022 titled "Village in danger due to fire in forest", Original Application 301 of 2022, Order dated 29th April, 2022.

[180] D.V Girish v. Union of India, 2022 SCC OnLine NGT 117.

development of a *sui generis*[181] Himalaya focussed jurisprudence, by the Tribunal.

[181] Of its own kind or class; unique or peculiar, Black's Law dictionary, 9th Edition. This would be, in a way similar to the NGT itself, *see* Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897, at paragraphs 63-67.

State of Uttarakhand

Month of June, 2021 (1)

1. ⑤ **Darshan Tika Ram Dobhal v. Ministry of Environment & Forest** 2021 SCC OnLine NGT 158 Jun 15, 2021

stone and muck Dumping in forest area, demarcation of land, environmental compensation

This case concerns dumping of muck[182] and stones inside a forest in the process of building a road, by the U.K Government PWD in Chakrata, District Dehradun.

In September, 2020, noting the damage caused to the environment due to such dumping, the Tribunal directed the forest department and U.K PCB to find out the extent of damage and also to take necessary action.

The report, submitted in April, 2021, stated that although no trees had been felled, dumping had, in fact, occurred in the reserved forest (called 'reserved land')[183], which accounted for a total of about 8 percent of the affected land. The forest department noted that the dumping was done in slope areas and not at the designated sites and had imposed a fine of 2.21 lac on the PWD.

[182] In a development project, muck is the material excavated, tunneled, dislodged or caused to be dislodged as collateral effect of primarily human interference from its natural position to its new location, *see* report of expert committee report on muck disposal and management in Tapovan Vishnugad Hydroelectric project available at http://www.indiaenvironmentportal.org.in/files/file/muck-disposal-Tapovan-hydroelectric-project-report-NGT.pdf.

[183] For a commentary on the scope of the term 'forest' in Uttarakhand, see news article titled "New Definition of Forest Foreshadows End of Forests in Uttarakhand".

The Tribunal directed the PWD to abide by the siting norms[184] for dumping and the forest department to keep vigil on the area.

Month of July, 2021 (1)

2. ⑤ **Surender Singh v. Public Work Department** Original Application 143 of 2021 Jul 6, 2021

felling of trees by a government agency, road construction

This case concerns the issue of felling of mango and oak trees in the process of road construction in Jamrari Band, District Almora, Uttrakhand, by the PWD. The Tribunal directed the Divisional Forest Officer of Almora to look into the situation while noting the need to take remedial action[185] if required.

Month of August, 2021 (1)

3. **Navkranti Swaraj Morcha Samiti v. State of Uttarakhand** 2021 SCC OnLine NGT 201 Aug 16, 2021 ④

tree felling, continuing inaction of authorities

This case concerns large scale tree felling in Rajawala, Dehradun, Uttrakhand allegedly being carried out by private parties using JCBs since the past many years. The petitioner mentioned that the use of

[184] For a commentary on disposal of road muck and debris in Uttarakhand, see article titled "Uttarakhand: Ensure safe disposal of Rural Road debris".

[185] An action intended to bring about or restore long-term environmental quality; Remediation: the restoration of polluted land, water, or air to its former state, or as nearly so as is practical; Restitution: The set of remedies associated with that body of law, in which the measure of recovery is usually based not on the plaintiff's loss, but on the defendant's gain, Black's Law Dictionary, 9th Edition.

these machines is being allowed by the revenue officer and sub-divisional magistrate. The Tribunal directed that a committee consisting of the State Environmental Impact Assessment Authority ("SEIAA"), Forest Department, and DM be formed to ascertain facts and take remedial action.

Month of September, 2021 (1)

4. **Ajay Bisht v. State of Uttarakhand** 2021 SCC OnLine NGT 265 Sep 3, 2021 ④

dumping of muck during road construction, public interest, tree felling, environmental compensation, restoration

This case concerns improper dumping and disposal of muck during the construction of a road in Jaminipar, Almora, Uttrakhand. The Government initially stated that the road was built in public interest (met with objections by the Jaminipar Gram Panchayat), but on further directions of the Tribunal, a Government fact finding team found that muck had indeed been dumped outside the designated areas and in violation of the forest clearance[186] granted for construction purposes, and the muck disposal plan submitted by the PWD. Other reasons stated by the Government for justifying violations were the inability to execute the muck disposal plan due to coronavirus and a strike by workers. During the process of road construction, a large number of trees were also cut, unaccounted for. The Government recommended that the felled trees may be valued and an amount be deposited with

[186] For a recent commentary of the forest clearance process vis a vis appellate powers of the NGT, *see* Citizens for Green Doon v. Union of India, 2021 SCC OnLine SC 1074.

the U.K treasury as forest revenue. The Tribunal directed the PWD to strictly abide by the recommendations of the Government in the report submitted, including adherence with the musk disposal plan, and imposed an additional penalty of 2,00,000 on the department for violations of the forest clearance permit.

Month of October, 2021 (4)

5. Citizens for Green Doon v. Union of India

felling of trees due to expansion of highway project, judicial and merit review, appellate powers of NGT and SC, felling of forest, misleading information in permitting process, application of mind, cause of action, cost benefit analysis, biodiversity, mitigation, National Forest Policy, carrying capacity, compensatory afforestation, safeguards, balancing and proportionality, strict scrutiny, wildlife corridor, eco sensitive zone

This case concerns the proposed expansion of a 20 kilometer stretch of NH72A between Ganeshpur and Dehradun, Uttrakhand, from a 2 lane to a 4 lane highway along with a 25 meter carriageway.

a. **Citizens for Green Doon v. Union of India** Original Application 240 of 2021, 2021 SCC OnLine NGT 290 Oct 6, 2021 ④

The petitioner alleged that out of the total 57.3 hectare forest land involved in this project, about 9.6 hectare is classified as a very high density forest. The petitioner also raised issues with respect to

misleading[187] reporting of local wildlife and lack of assessment of the biodiversity[188] of the areas impacted by the project. The Tribunal noted that the correct remedy under law in this case was to file an appeal against the permit given for the road expansion project which was not done despite a SC order stating the remedy in another case filed by the same petitioner in a similar fact scenario. The Tribunal noted that the permitting process under the Forest (Conservation) Act, 1980, is two tiered and permission to cut trees is granted after the first tier permit, and that there was no fact or reason to show that the cutting of trees involved was illegal. However, the Tribunal clarified that all efforts need to be taken to protect trees, and abide by permits.

b. Appeal 29 of 2021, 2021 SCC OnLine NGT 326 Dec 13, 2021 ③

The petitioners had initially raised the issue of large scale felling of trees in process of road widening and elevated corridor construction from Ganeshpur to Dat Kali Temple in U.K. The Tribunal had dismissed that petition reasoning that the petitioners should instead have filed an appeal against forest clearance to be given for the road widening project. The SC, in a detailed order, set aside the Tribunal's order of dismissal stating that it was bound to consider the grievances of the petitioners. The petitioners hence moved before the Tribunal again in appeal against a Stage I Forest Clearance, issued in the midst of proceedings before the SC, for the purpose of felling of trees in forest land for the road widening project in question. The appeal was amended to challenge additional permits, as a final forest clearance by the State of U.K was also issued in the meanwhile.

[187] Calculated to be misunderstood, Black's Law dictionary, 9th Edition.

[188] *See* Section 35(4)(i) of the Biological Diversity Act, 2002.

The petitioners stated various reasons for challenging the clearance order including the absence of detailed studies on the impacts of felling on the surrounding ecologically sensitive landscape, misleading information about biological diversity around the proposed road, absence of a cost benefit analysis[189] and carrying capacity[190] study, and inadequate mitigation measures.

The Government agencies, including the NHAI, Forest Departments concerned and States of U.K and Uttar Pradesh (where one end of the project is proposed) opposed the petitioners arguments stating various reasons including - the highways in question was of significant strategic importance from a defense perspective, travel to and from in the hilly regions of the highway was inefficient both to travelers and wildlife under existing conditions, elevated corridors and underpasses were planned keeping wildlife (including elephants) in mind and using detailed studies.

The Tribunal refused to set aside the clearances primarily based on a balancing approach[191] required in cases where development in forest areas is inevitable. The Tribunal also reasoned that in the form requiring disclosures about relevant wildlife in the region, a listing of

[189] *See* Annexure III of Handbook of guidelines for effective and transparent implementation of the provisions of Forest (Conservation) Act, 1980.

[190] For a commentary on the concept of carrying capacity, *see* The study of Environmental Carrying Capacity of erstwhile Udupi Taluk in relation to expansion of 2X600MW Udupi power Plant (UPCL), available at https://greentribunal.gov.in/sites/default/files/news_updates/8617.pdf.

[191] Balancing test: A judicial doctrine, used esp. in constitutional law, whereby a court measures competing interests as between individual rights and governmental powers, or between state authority and federal supremacy - and decides which interest should prevail, Black's Law dictionary, 9th Edition; For a recent commentary of the 'balancing approach' *see* M/s Pahwa Plastics v. Dastak NGO, 2022 SCC OnLine SC 362. *See also* R v. Chester City Council, (2011) 1 All ER 476 at paragraphs 14 to 16 as relied on in Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338 at paragraph 119.

all concerned wildlife was indeed provided, hence deeming the disclosures made to be transparent. The Tribunal also found that the executive appraising authorities had indeed undertaken planning for muck disposal, wildlife impact mitigation (by the National Board for Wildlife), cost benefit analysis[192] and generally environmental impacts. Importantly, the Tribunal found that neither Environmental nor Biological Diversity Impact Assessment was mandated under laws and were studied by the existing authorities in any case considering the nature of the proposed project.

Ultimately, the Tribunal did not accept the arguments of the petitioner that the executive authorities concerned failed to apply their mind to the proposed project. It directed that all clearances must be clearly uploaded and communicated[193] for the sake of transparency and that mitigation measures must be strictly implemented. To ensure this implementation, the Tribunal constituted a 12 member oversight committee headed by the Chief Secretary, Uttrakhand (this committee was later reconstituted by the SC). It also directed NHAI to deposit an amount of 1 crore for purposes of research into local tree (Sal) regeneration, in addition to increased quantum of compensatory afforestation. Lastly, it directed for additional mitigation measures including cordoning of elevated portions of the highways, noise and light reduction, camera monitoring, animal rescue and awareness.

[192] An analytical technique that weighs the costs of a proposed decision, holding, or project against the expected advantages, economic or otherwise, Black's Law dictionary, 9th Edition.

[193] Communicate: The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception, Black's Law dictionary, 9th Edition.



Legacy waste falling into the Khoh river © जागरण

6. Arvind Baniyal v. State of Uttarakhand Original Application 144 of 2019 (along with Manoj Negi v. State of Uttarakhand) Oct 7, 2021 ④

waste disposal and burning near river, legacy waste, disposal siting, public health, bioremediation, planning, environmental compensation, sewage, rule of law

This case concerns the illegal dumping and collection of waste over time on the banks of river Khoh, in villages Village Ratanpur, Kashirampur, Gadighat and near the sports stadium at Kotdwar in U.K. The 'Nagar Nigams' of each of these villages had also been burning this accumulating, or legacy waste[194] on the river bank. During the pendency of this case, the SC directed for strict compliance with the Municipal Solid Waste Rules of 2016. The Tribunal itself had been dealing with the issue of illegal waste disposal across India in another ongoing case, where it developed a scheme of monthly penalties to be paid for local bodies (such as nagar nigams) that fail to process waste according to the Solid Waste Rules, based on metrics including population. The rationale of imposing a penalty was the huge costs involved in any non compliance of laws and rules concerning solid waste. It is noteworthy that the Tribunal has also been dealing with yet another nationwide issue with respect to pollution of rivers, the directions in which were referred to in its discussions on solid waste mismanagement.

On noting that the legacy waste issue at the banks of the Khoh continues, the Tribunal, while citing the penalty scheme developed by it on a nationwide scale issued strict warnings to the Secretary of Urban

[194] *See* also CPCB Guidelines for Disposal of Legacy Waste (Old Municipal Solid Waste).

Development and Chief Secretary of U.K, as well as local officials. The warnings ranged from imposition of penalties on local bodies to criminal liability and adverse entries in the annual confidential reports of the government agency officers concerned. As a result of these warnings, the Secretary of Urban Development, Uttrakhand filed a report with the Tribunal describing various plans, financial schemes, and equipment procured for the purpose of processing legacy waste near the Khoh. However, the U.K PCB noted that the situation on site had not changed and the river continued to get polluted, in a report filed on the same day as that of the Secretary of Urban Development. The Board also noted that it had issued stringent directions under the EP Act, to the Kotdwar Nagar Nigam with respect to immediate stoppage of dumping of solid waste on the banks of the Khoh and establishing a waste processing facility. Incidentally, the establishing of facilities also required environmental and forest clearance, as noted by the Secretary of Urban Development.

The Tribunal finally disposed of the matter expressing its disappointment with the state of U.K in not adhering to the rule of law and not ensuring payment of compensation by erring officers. It also directed the Chief Secretary of U.K to take further stringent remedial measures in accordance with the various orders passed by it in the past. It may be noted that this inaction on part of the PCB was not a one of instance, with serious issues arising in other cases during the year.

7. Ramesh Chandra Kapri v. State of Uttarakhand Original Application 168 of 2019 Oct 7, 2021 ④

dumping of solid waste in forest land, planning, environmental compensation, bioremediation, legacy waste, public health

This case concerns dumping of solid waste in forest land in Pithoragarh, Uttrakhand. According to the Government, a detailed project report for a solid waste management plant estimating the cost at about 637 crore rupees had been prepared and the project was awaiting environmental clearance[195], implementation, and release of funds. However, the Tribunal noted that the illegal dumping continued, citing its orders wherein it had developed a penalty scheme for the issue of legacy waste across the nation. The U.K PCB, in a report verified the continuing illegalities and pollution due to unscientific methods of dumping. Noting that the fact situation is similar to the Arvind Baniyal case, the Tribunal passed a similar order directing the Chief Secretary of U.K to take stringent remedial measures.

8. Chander Singh v. Union of India 2021 SCC OnLine NGT 309

dolomite mining, muck disposal, environmental compensation, geo-referencing, agriculture, overflowing of waste in river, mining across state, eco-sensitive region, compensation

This case concerns illegal mining of dolomite in Dundu, Tehsil Didihat, District Pithoragarh, U.K covers an area of about 4.2 hectares including about 2.3 hectares of forest land.

[195] For a recent commentary on the environment clearance process, *see* Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401.

a. **Chander Singh v. Union of India & Ors.** Original Application 995 of 2019, 2021 SCC OnLine NGT 309 Oct 26, 2021 ④

The Tribunal had constituted an expert committee to assess the quantum of compensation and draw up a remediation plan for the affected area, and stopped any mining in the interim period. That committee had importantly recommended a geo-referencing of the entire area to assess impacts by drones, among various other measures to contain the spread of the waste in surrounding slopes and water bodies. The miners also moved in appeal to the SC against orders of the Tribunal for interim closure of mining activities but the appeal was dismissed.

The Tribunal noted that the amount of restoration must go beyond damage caused to agricultural yields and must also include costs of restoration of damaged environment, in line with the Samaj Parivartana Samudaya judgment, which required compensation to be 10 percent of the selling price of the mined material. However, in this case, the Tribunal directed the miners to pay an interim compensation of 2 crores and reconstituted the expert committee for implementation of the restoration plan. This committee now includes representatives from the CPCB, U.K SEIAA, District Administration, Pithoragarh, U.K PCB, Indian Bureau of Mines, Ministry of Mines, Soil and Water Conservation Research Centre, Dehradun, G.B. Pant National Institute of Himalayan Environment, Almora, U.K, Forest Department, U.K, Department of Forest, U.K and Department of Mines, U.K. The Tribunal also asked the U.K Government to review the mining operations in the entire state considering the ecological sensitivity and fragility of the Himalayan range. Finally, the Tribunal directed that no

mining may be carried out till the entire area is restored and the victims of illegal mining are duly compensated.

b. Review Application 41 of 2021 in Original Application 995 of 2019, filed by N.B. Minerals Corporation Jan 28, 2022 ④

The application sought review of an order dated 26th October, 2021 by which the Tribunal held the review applicant liable to pay compensation for violation of environmental norms. The review applicant caused environmental damage by dumping muck in the river and failing to take any measures to prevent spillage from the pit area towards the valley. The Tribunal disposed of the application as review of it sought a re-hearing of the case, which was against the law[196].

Month of November, 2021 (2)

9. Jeewan Chandra Kashneyal v. Bhuwan Chandra Kapri Original Application 258 of 2021 Nov 9, 2021 ③

air pollution by food processing mill, operation without permit, statutory function of PCB, suo motu action by PCB, environmental compensation

This case concerns the operation of an Atta Chakki and Masala Udyog causing noise and air pollution in Tildhukari, Pithoragarh, Uttrakhand. According to the district administration and PCB, the unit had not been granted any permits under EL for operating. Importantly, the Tribunal noted that a mere finding of operation without permit was

[196] For a commentary on the review jurisdiction of the National Green Tribunal, *see* Themrei Tuithung v. Union of India, 2017 SCC OnLine NGT 967.

not enough, and PCBs are under a statutory obligation to keep strict vigil and take enforcement action with respect to any activity causing or likely to cause pollution. Such action needs to be taken whether or not someone approaches them with a complaint. The Tribunal therefore directed the PCB and district administration to take action within a period of two months.

10. Bhagwan Singh v. State of Uttarakhand Appeal 26 of 2021 Nov 30, 2021 ③

improper siting of waste treatment facility, eco-fragile region, scope of appellate powers of NGT, threshold for setting aside environmental clearance

This case concerns an appeal against an environmental clearance granted for purposes of a common bio medical waste treatment plant in Kodarna, Garhwal, Uttrakhand. According to the petitioner, the facility had been proposed based on misleading information[197] particularly with respect to proximity to forests, water bodies, habitation, school, and panchayat house. The petitioner also raised the issue of wrong disclosure of geo coordinates and encroachment on government land.

The Tribunal found the appeal to be without merit considering the importance of a biomedical treatment facility. According to the Tribunal, there are bound to be sensitive locations near a proposed plant. As long as there is no prohibition on construction, there can be

[197] For a recent commentary on misleading information and the environmental clearance process, *see* University of Delhi v. Ministry of Environment, Forest and Climate Change, Appeal 17 of 2021.

no case for violation of siting norms. The Tribunal also noted that the issue of geo coordinates was too technical, and those of objections from gram panchayat and encroachment on government land were to be dealt with appropriate authorities, and did not form ground for interfering with the environmental clearance.

Month of January, 2022 (3)

11. Vippin Nayar v. Union of India 2022 SCC Online NGT 9 Jan 3, 2022 ③

construction in river floodplain, untreated waste, exception to no-construction on floodplain principle

The application was against the construction activities in the flood plain zone of river Ganga. The Municipal Corporation, Rishikesh has been constructing toilets in the said area and discharging untreated waste into the river.

The DM, Dehradun in his report has mentioned that the public toilet is under construction at a distance of 20.77 m from Ganga. Due to the lack of a sewer line, a septic tank has been constructed to collect the waste. The construction is almost completed but the work has been suspended in light of the order of the Tribunal. The washrooms were being constructed for visitors of Astha Path. The Tribunal did find merit in the objections filed by the petitioner but in the light of lack of available sanitary services for the public visiting the place, it ruled that the arrangement should be interim and not be treated as a precedent[198].

[198] For precedent on the issue of construction on floodplains of the Ganga and rivers in general, *see* M.C Mehta v. Union of India, (2017) SCC OnLine NGT 1980 and Paryavaran Suraksha Samiti v. Union of India, (2017) *5* SCC 326.

The washroom should be shifted to an appropriate location where construction is legally allowed. Till an alternative arrangement is made, septic tanks should be regularly cleaned and maintained to ensure that no untreated sewage is discharged into the river.

12. Chaitanya Bhandari v. Uttarakhand Environment Protection and Pollution Control Board 2022 SCC OnLine NGT 12 Jan 12, 2022 ④

dumping waste in river, burning of waste, planning, funds for waste treatment, environmental compensation, air pollution, public health, bioremediation, state wide applicability

The application was brought against the violation of Solid Waste Management Rules 2016 at Garsain, Chamoli District. The dumping ground is 10 m from the Ram Ganga River, as against the prescribed distance of 100 m. The waste is falling into the river and it's also being burnt. The unscientific disposal has invited scavengers and is contributing to spread of diseases.

The Secretary, Urban Development, U.K in their submission has maintained that the waste disposal system has been upgraded and is in process of being installed in 88 out of 100 municipalities. The bench directed that the monitoring of the upgradation should be at 3 levels - Municipal Councils, DM and Director, Urban Development. The monthly proceeding as a result of monitoring shall be uploaded on the website of Urban Development. Additionally, the compliance of Solid Waste Management Rules may be ensured by the concerned statutory authorities. It added that towns with less than one lakh population and particularly, located on hilly terrain need to adopt standardized waste processing packages and residue/rejects ought to be properly managed.

The State Urban Development Department needs to set up a mechanism at District level for setting up of waste recycling systems to follow environmentally safe practices.

13. **Team Taoveda Dimensions NGO v. Union of India** 2022 SCC OnLine NGT 18 Jan 24, 2022 ②

tunneling in mountainous area, fragile mountains, felling of trees, threshold under Section 14 of NGT Act

The complaint was filed against the 2.74 km long tunnel project in Mussoorie. The area near the tunnel was an earthquake sensitive zone and for the completion of the tunnel, the authorities would have to cut around 3000 deodar and oak trees.
However, the Tribunal disposed of the application as it did not give details or particulars of the authorities carrying out the above alleged construction.

Month of February, 2022 (2)

14. **Satish Chander Singh v. Uttarakhand Environment Protection and Pollution Control Board** 2022 SCC OnLine NGT 71 Feb 22, 2022 ③

illegal operation of hot mix plant, public health, agriculture, habitation, air pollution, absence of siting criteria, precautionary and sustainable development principles

The grievance in this original application was against violation of environmental norms in the operation of a hot mixture plant by K.B.M Infrabuild Pvt. Ltd in Nandauli Village, Pauri Garhwal. The petitioner has complained about the lack of action by the DM about the

deficiencies in the plant. As the plant was no longer operational, the Tribunal directed the State PCB to lay down siting and other norms for the hot mixing Plant and ensure that the existing and the new norms are being complied by such plants in the state.

15. ⑥ **Jagdish Chandra Pandey v. State of Uttarakhand** Original Application 197 of 2020 Feb 25, 2022

Construction of road in mountainous area, felling of trees, muck dumping in forest, polluter pays principle, environmental compensation, blocking of water streams

This case concerns violation of environmental norms during construction of Kotila-Gawad-Suraikhet Motor Road in Tehsil Dwarahat, District Almora, U.K. The petitioner alleged that a large number of trees are being damaged in the process by the concessionaire. On directions by the Tribunal, the PCB filed a report finding that trees had been cut and muck disposed of illegally, and local biodiversity threatened. The report assessed the environmental compensation to be more than Rs. 60 L. Based on the report, the Tribunal directed the Principal Secretary, Forest Department of U.K to undertake further restoration work with respect to forests and water courses damaged and sites impacted by muck disposal.

Month of March, 2022 (1)

16. **Kamal Kishore Kandpal v. State of Uttarakhand** Original Application 156 of 2022 Mar 9, 2022 ②

illegal chalk mining, agriculture, individual grievance

This case concerns illegal mining allegedly damaging agricultural land in Bakhet, Bageshwar, U.K. The Tribunal refused to entertain the case since it did not involve environmental issues and appeared to be a private dispute concerning agricultural land.

Month of April, 2022 (3)

17. **Bharti Kawatra v. Uttarakhand Tourism Development Board**
Original Application 218 of 2022 Apr 8, 2022 ④

road construction without permit, encroachment of private property

This case is the third in a row of cases brought before the Tribunal raising the issue of road cutting without any permits in Mussoorie, Dehradun. The first and second time around, this issue was closed considering a report which stated that no new construction was taking place. The petitioner then filed a civil suit before the Civil Judge at Dehradun and obtained a report confirming new construction. The petitioner also stated that her private property was being encroached in the process. Therefore, she stated that the reports submitted to the Tribunal earlier were incorrect. However, the issue which then arose was whether a new case could be filed asking the Tribunal to review its earlier orders, answered in the negative by the Tribunal. However, the petitioner was granted liberty to take a suitable remedy available under law.

18. **Rakesh Verma v. State of Uttarakhand** 2021 SCC OnLine NGT 261 Apr 21, 2022 ②

setting up of petrol pump without permits, siting criteria for petrol pumps, habitation, application of mind by PCB

This case concerns the construction of a petrol pump and retail outlet by Reliance BP Mobility Ltd. and Mussoorie Development Authority at village Ajabpur Kalan, Dehradun. The petitioner had filed an objection to the No Objection Certificate application made for the purpose of this complex before the PCB on the public health grounds concerning the residential area surrounding the concerned location. When the authorities failed to respond, the petitioner had approached the Tribunal raising the same issues. The counsel for Reliance BP Mobility Ltd. had then stated that there is no violation of the NOC. The Tribunal then refused to take up the issues raised asking the petitioner to raise them before the PCB and challenge any illegal permits in accordance with law[199].

The petitioner now states that within four days of the order of the Tribunal, the PCB had granted NOC for the petrol pump without any application of mind. Crucially, the petitioner stated that the project map was cleared by the planning authority without any scrutiny[200] despite holding back other projects for want of information on residential areas. The Tribunal therefore constituted a committee of PCB and DM, Dehradun to verify the allegations. The committee

[199] Refer to provisions constituting appellate authorities created under Air (Section 31) and Water (Section 28) Acts.

[200] *See* Techi Tagi Tara v. Rajendra Singh Bhandari, (2018) 11 SCC 734. *See* also, generally, T.N Godavarman Thirumulpad v. Union of India, 2022 SCC OnLine SC 716.

reported that the PCB had suggested the DM to cancel the NOC. The Magistrate has themselves found that the project was located in violation of CPCB guidelines for petrol pumps. Based on this information, the Tribunal disposed of the matter directing the authorities to take remedial action in accordance with law.



Map of locations of fires in U.K over one day, 2014

© Jackson Institute of Global Affairs

19. In re : News item published in Hindustan dated 21.04.2022 titled "Village in danger due to fire in forest" Original Application 301 of 2022 Apr 29, 2022 ③

forest fires, biodiversity, habitation, disaster management, frontline firefighter training, satellite mapping, compensatory afforestation funds, statewide issue

This case concerns the issue of forest fires in the Champawat division in U.K and the impact on habitation, biodiversity and environment therein. The Tribunal noted the need to take remedial action, prevent future fires and rehabilitate those impacted. It noted the presence of various systems in place to tackle forest fires, including the National Action Plan of Forest Fires ("NAPFF") and Central Sponsored Forest Fire Prevention and Management ("FPM") Scheme. The Tribunal went on to cite its previous order concerning the issue of forest fires, wherein it highlighted the need to strengthen the personnel force responding to these fires, and assess loss caused by garnering financial resources including those in CAMPA funds. The Tribunal had also then emphasized on the list of forest fire hotspots created using satellite mapping and the need for state forest departments to curb forest fires. In continuation of that order, the Tribunal directed the Secretary of Forests for U.K to look into the situation, take action to rehabilitate affected persons and restore the area concerned, while utilizing CAMPA[201] funds available with the state if required. While disposing

[201] *See* Rule 5, Compensatory Afforestation Fund Rules, 2018.

the case, it left it open for any aggrieved[202] party to take remedy as per law.

Month of May, 2022 (4)

20. **Naveen Rana v. State of Uttarakhand** Original Application 296 of 2022 May 5, 2022 ②

commercial construction near river

This case concerns the construction of shops at Swarg Ashram, at a distance of 100 meters from the Ganga without any construction plan authorization and in violation of orders of the Tribunal[203] and Uttarakhand High Court. The Tribunal constituted a committee of the PCB and DM, Pauri Garhwal to look into the grievances of the petitioner, and take suitable remedial action.

21. **Tejinder Kumar Jolly v. State of Uttarakhand** Original Application 449 of 2019 May 10, 2022 ③

illegal operation of stone crushers, judicial review of NGT order, retrospective application of siting criteria, right to life, groundwater, environmental compensation

This case was remanded to the Tribunal by a judgment of the SC on grounds of failure to consider issues concerning illegal stone crushing on merit. The case concerns operation of stone crushers in close proximity to schools and residential areas in Haldwani. The main issue

[202] (Of a person or entity) haVing legal rights that are adversely affected; having been harmed by an infringement of legal rights, Black's Law dictionary, 9th Edition.

[203] M.C Mehta v. Union of India, (2017) SCC OnLine NGT 1980.

before the Tribunal for consideration was whether siting criteria applicable on stone crushers had a retrospective effect. In its judgment, the SC, relying on an earlier judgment of the Tribunal answered in the affirmative. The Tribunal concurred, and held that the siting criteria would apply to the concerned stone crushers, which had been established in 1985. This, according to the Tribunal would be necessary to enforce the fundamental right to life of habitants proximate to the units. The Tribunal also cited the precautionary and sustainable development principles in support. The Tribunal directed the PCB and DM of Nainital to enforce its directions restraining operation of stone crushers concerned. It also directed the PCB to assess damage caused and recover compensation for illegal extraction of groundwater.

22. Shivalik Emerald Hills Residents Welfare Society v. Department of Forest, Uttarakhand Original Application 215 of 2021 May 18, 2022 ④

retaining wall, encroachment in forest land, riverbed, demolition

This case concerns encroachment of forest land in Malsi Forest in Bindal Rao in Rajpur Area, Dehradun. At an earlier occasion, the Tribunal had directed the Forest Department, DM, Dehradun and SEIAA, U.K to ascertain the factual situation on ground. The joint committee confirmed in so far as that the private owners concerned had indeed caused an encroachment by constructing a retaining wall in land also registered as riverbed and that such encroachment had been removed via demolition. However, the committee did not find any forest to be encroached upon. The Tribunal found that no further orders were called for and disposed of the case.

23. **Pramod Kumar Sharma v. Uttarakhand Environment Protection & Pollution Control Board** Original Application 316 of 2021 May 18, 2022 ④

illegal operation of automobile service stations, application of mind by PCB, collusion

This case concerns the continuing illegal operation of an automobile service station in Jwalapur, Haridwar. This issue was reopened for consideration due to the continuing operation of these units despite an undertaking indicating otherwise by the PCB. The Tribunal expressed its disapproval of the way the PCB let the units operate despite clear findings of violation of the law. The Tribunal also noted the continuing discrepancies between these clear findings and oral statements made by the Member Secretary of the PCB that the unit was allowed to continue after the stoppage of the water and electricity connection. In the face of these facts which suggested collusion between the unit and the Board, the Tribunal directed the Chief Secretary of Uttarakhand to look into the conduct of the Member Secretary of the Board and ensure that important positions are manned by people who are 'above board' in dealing with the Tribunal.

State of Himachal Pradesh

Month of June, 2021 (I)

24. P ⑤ **Ashish Shaunik v. State of Himachal Pradesh** 2021 SCC OnLine NGT 138 Jun 4, 2021

stone crushing proximate to rivers and PAs, precautionary principle, sustainable development principle, power of Tribunal to review delegated legislation, powers of High Court *vis a vis* judicial review[204]

This case concerns the operation of stone crusher units in village Banala, District Mandi, H.P. According to the petitioner, the units were operating in close proximity to the Tirthan river, Great Himalayan National Park, Tirthan Sanctuary, the local government school, hospital, and reservoir of Larji Dam.

Citing the precautionary principle[205], the Tribunal directed the stone crusher owner to prepare an action plan to mitigate[206] the harm already caused by the units. The Tribunal directed that this plan be approved by the H.P. PCB, and implemented within two months. The Tribunal also emphasized that in light of the precautionary principle, no exemption should be permitted from existing environmental norms.

[204] *See* State of Himachal v. Bhag Singh, 2020 SCC OnLine HP 2680, *see* also Ghangal Stone Crusher v. State of Himachal Pradesh, CWP 3711 of 2021 and Himachal Grit Udyog v. Union of India, Civil Appeal 94 of 2019.

[205] For a recent commentary on the precautionary principle in the context of the NGT, *see* Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897, paragraphs 76 to 81.

[206] To make less severe or intense; Mitigation of damages doctrine: The principle requiring a plaintiff, after an injury or breach of contract, to make reasonable efforts to alleviate the effects of the injury or breach, Black's Law dictionary, 9th Edition.

The issue of a one time exemption granted to stone crushers affiliated with hydroelectric projects considering public interest was also raised. This exemption was interpreted by the Government of H.P. to be of a general nature, considering a reference of the phrase "public interest" in 2014 guidelines pertaining to stone crushers[207]. The Tribunal clarified that the exemption granted was limited to a specific instance of crusher units working only for the purpose of constructing the hydropower project using muck generated in the process of tunneling.

Month of July, 2021 (1)

25. ⑤ **Sher Singh v. Government of Himachal Pradesh** 2021 SCC OnLine NGT 186 Jul 8, 2021

encroachment of Government land, delay in protecting public land against encroachment, adjudication on legislation not included in Schedule I of NGT Act, 2010

This case concerns the issue of encroachment[208] on Government Land in Narkanda, where a question of presence of forest was also involved. Reflecting the serious views taken by the SC on encroachments on forest land and environmental rule of law (in context of construction of a bus stand in forest area at Mcleodganj, H.P) in the recent past, the Tribunal directed the Chief Secretary, H.P to ensure that eviction proceedings and remedial action to protect government land be carried out.

[207] *See also* 2021 notification amending 2014 guidelines pertaining to stone crushers.

[208] An infringement of another's rights; an interference with or intrusion onto another's property, Black's Law dictionary, 9th Edition.

This direction came despite the finding that although the said piece of land was a *'gair mumkin sadak*[209]*'* belonging to the government, it was a non-forest area.

Month of August, 2021 (2)

26. P Mahinder Kumar v. State of Himachal Pradesh

hot mix plant operation, operation without consent, lacunae in siting criteria for hot mix plants, precautionary, sustainable development and polluter pays principles

This case concerns the operation of a hot mix plant in Madhubaad, Chamba, H.P.

a. **Mahinder Kumar & Ors. v. State of Himachal Pradesh & Ors.** Original Application 186 of 2021 Aug 3, 2021 ④

The petitioner alleged that the plant is causing pollution, operating without relevant consents from the H.P PCB, and located merely 50 meters from a primary school. The Tribunal directed the board to take further remedial measures within one month.

b. **Mahinder Kumar & Ors. v. State of Himachal Pradesh & Ors.** Execution Application 34 of 2021 in Original Application 186 of 2021 Dec 17, 2021 ③

The application sought execution[210] of order for remedial action against illegal operation of a hot mix plant at Madhubad Village, P.O

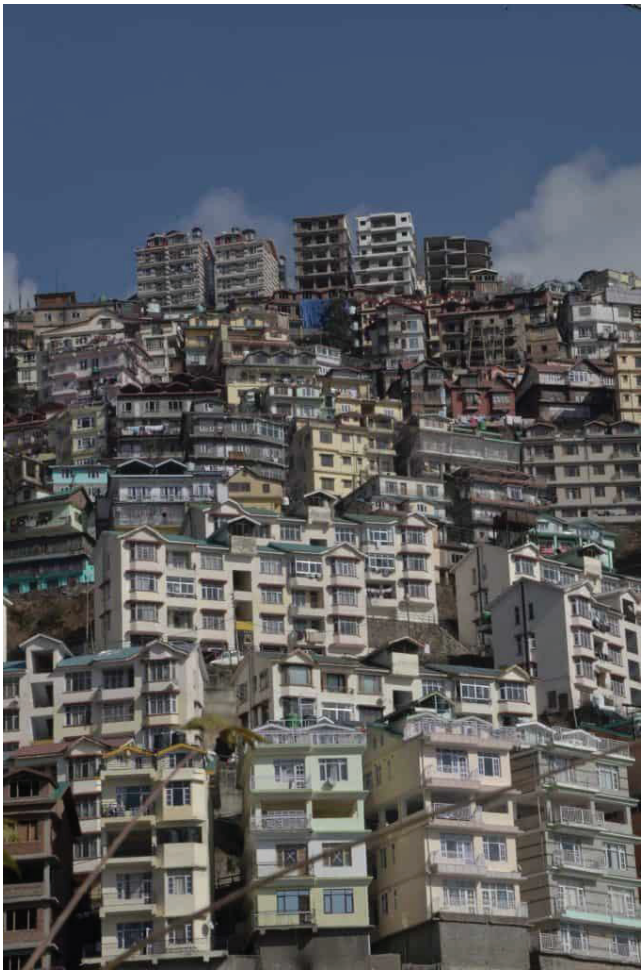
[209] *Gair mumkin* indicates uncultivable, *see* Delhi Development Authority v. Mohd. Saleem, 2012 SCC OnLine Del 4859, at paragraph 17.

[210] *See* Section 25, NGT Act.

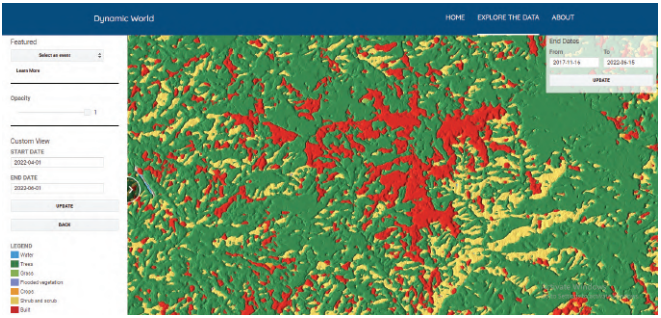
Jasougrah, Churah Tehsil, Chamba District without the required permissions and equipment which has resulted in adverse impacts on the environment and public health. On the basis of the report filed by State PCB, the Tribunal observed that the hot mix plant still does not have requisite consents. The State PCB in their report claimed to have issued show cause notice dated 18th August, 2021 on the issue of installing requisite pollution control devices and making improvements, followed by a notice dated 28th October, 2021, to stop the plant till Consent to Operate ("CTO") is obtained. The Tribunal noted that the PCB has not assessed and recovered the compensation for the period for which the hot mix plant had already illegally operated on 'polluter pays[211]' principle which needs to be done expeditiously, following due process of law. It directed the PCB to adopt an appropriate siting policy, if not laid down so far, having regard to the fact that hot mix plants are hazardous to the environment with huge potential for air pollution and are established in violation of precautionary and sustainable development[212] principles.

[211] For a recent judgment of the NGT wherein the polluter pays principle was applied via imposition of environmental compensation, *see* Janajagriti Samithi v. Union of India, Original Application 26 of 2013, Southern Zone Bench.

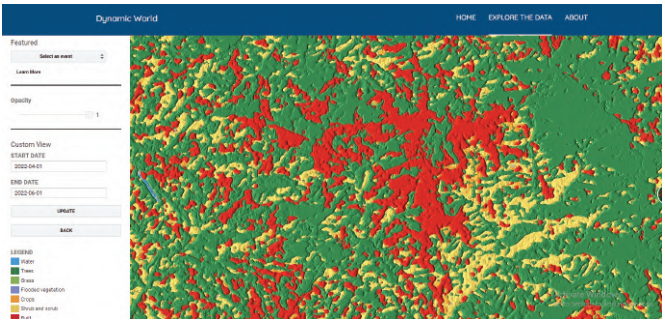
[212] For a recent commentary on the principle of sustainable development, *see* T.N Godavarman Thirumulpad v. Union of India, 2022 SCC OnLine SC 583, at paragraph 15.



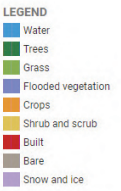
Multi story construction in Shimla © Pradeep Kumar



Shimla rendered on Google Earth Dynamic World on 16th November, 2017 when the NGT passed judgment in the Yogindra Mohan Sengupta case, imposing severe restrictions on construction in the city. The red portions indicate built up area © Google



Shimla rendered on Google Earth Dynamic World on 15th June, 2022 © Google



© Google

27. P Yogindra Mohan Sengupta v. Union of India

construction in judicially regulated land use area, precautionary, polluter pays and sustainable development principles, planning, public trust doctrine, intergenerational equity, carrying capacity, *in dubio pro natura*, biodiversity, right to property and due process, *functus officio*, *stare decisis*, judicial infrastructure

The Tribunal had, via a 2017 judgment, imposed various restrictions on development of any kind in the Shimla Planning area, and set in place a two-tier regulatory mechanism consisting of expert committees.

a. **Miscellaneous Applications 56 - 58 of 2021 in Original Application 121 of 2014, filed by Rail Land Development Authority** Aug 31, 2021 ④

This case concerns an application made by the Rail Land Development Authority seeking construction of a multi level parking lot and hotel in Shimla. The authority had applied considering that the Tribunal, in a past judgment, had imposed stringent restrictions on any construction work in Shimla. Particularly, the Tribunal had prohibited any new construction in any part of the 'core and forest areas' of the city (as demarcated by a development plan). Even outside these areas, the Tribunal directed that construction would strictly have to be in accordance with planning and environmental laws, and seek permission from specially designated expert committees created by the Tribunal in the judgment. Based on its judgment, the Tribunal concluded that a parking lot and hotel would not be permissible

construction. Importantly, the Tribunal noted that often, commercial[213] construction is sought in the garb of public utilities[214], which causes severe damage to the unstable mountain environment of Shimla, as established by various experts. The directions came despite an argument made by the authority that the High Court at Shimla has in fact deemed such construction necessary.

b. Miscellaneous Applications 59 and 60 of 2021 in Original Application 121 of 2014, filed by Pushpa Bragta and Himachal Pradesh Administration Department Sep 13, 2021 ③

Similar to the application seeking construction of a parking lot, the petitioners sought construction in existing structures in a restricted area under the 2017 judgment. The structures sought to be constructed included a lift within a building for purposes of accessibility, a ramp, and a multi story parking lot in Shimla.

On coming across the issue of parties seeking permits to construct in an area for which the Tribunal had already issued binding restrictive directions again, it sought to clarify the law with respect to seeking orders in a decided case. Such orders may only correct unintended mistakes, and not delve into matters of modification or re-adjudication on substantive issues and merits. In other words, once the court has given finality to a case via a judicial order, its jurisdiction to make any

[213] *See* definition of 'commercial use' under Himachal Pradesh Town and Country Planning Act, 1977.

[214] Indicative of "*hospitals, schools and offices of essential services but would definitely not include commercial, private builders and any such allied buildings*". *See* Yogindra Mohan Sengupta v. Union of India, Original Application 121 of 2014, at paragraph 112.III.

modifications to the same comes to an end (functus officio[215]) with the exception of clerical/arithmetic errors[216].

c. Miscellaneous Application 68 of 2021 in Original Application 121 of 2014, filed by the High Court of Himachal Pradesh Oct 8, 2021

④

This case concerned yet another application seeking permission to construct in an area where the Tribunal had previously strictly regulated construction due to the extreme stress on the ecology of Shimla, H.P. The Tribunal, whilst taking note of the highest priority that expansion of the High Court complex entails, refused to permit any expansion, citing the 2017 judgment. The Tribunal emphasized on the various directions in that judgment, with particular reference to the complete embargo on any new construction in the core and forest areas of the city, even if that construction was of an 'institutional' nature (Directions II, XI, and XVI). Of note was the weight the Tribunal placed on a report of the Comptroller and Auditor General of India on regulation of constructions in hill areas of H.P. It also noted that a construction cannot be permitted even on an exceptional basis if it impacted public safety and degree of ecological vulnerability of Shimla.

[215] [Latin "having performed his or her office"] (Of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished, Black's Law dictionary, 9th Edition, *See also* SBI v. S.N. Goyal, (2008) 8 SCC 92, at paragraphs 26 and 27.

[216] Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169 at paragraphs 9 and 10.

d. ⑤ **Miscellaneous Application 22 of 2022 in Original Application 121 of 2014, (12th April, 2022) filed by the petitioner** Apr 12, 2022

Yogendra Mohan Sengupta, the petitioner in the 2017 judgment, filed this application raising the issue of the 2041 Shimla Masterplan. The petitioner alleged that the plan was in violation of the judgment of the tribunal in the Yogendra Mohan Sengupta case. The Tribunal, whilst relying on other orders passed in similar applications, found that a master plan could not be challenged by filing a case in a decided matter.

Month of November, 2021 (1)

28. **Qurx Pharmaceuticals v. Himachal Pradesh Pollution Control Board** Appeal 27 of 2021 Nov 18, 2021 ③

effluent discharge by pharmaceutical industry, environmental compensation, polluter pays principle, calculation of compensation amount, review of order made by PCB, redetermination

This case concerns a closure notice issued by the PCB to Qurx Pharmaceuticals for discharging untreated effluents. The PCB had also sought environmental compensation of 14.5 Lakh considering the past failure of the company to respond to its show cause notices and the quantum of pollution. The company filed an appeal before the Tribunal challenging the closure and compensation order arguing that the compensation amount was decided without any basis and the closure notice was issued based on field inspection for a day when the 'evaporator' at this company's premises was not functioning and no

pollution was taking place. The Tribunal noted that the company did not dispute any past pollution and its arguments did not mean that pollution did not in fact take place. Based on the record and in refusing to interfere with the basis of the order (considering that the company had not disputed past pollution), the Tribunal directed the PCB to halve the compensation sought and redetermine the entire compensation amount based on submissions of the appellant, via an order. The reduced compensation would be used for remediation efforts. It also gave the PCB liberty to appeal against this order considering that it had been passed ex-parte[217].

Month of December, 2021 (2)

29. **Capt. P. C. Bhandari v. Rameshwar Sharma** Original Application 315 of 2021 Dec 3, 2021 ③

construction of rice mill, planning

The case of the petitioner was that a rice mill was constructed in Paonta Sahib without following requisite environmental norms. The Tribunal noted lack of any information on a master plan specifying the locations of rice mills and also that the food market in which the mill was being constructed was not in an industrial area. While refusing to interfere at this stage, the Tribunal clarified that any construction needs to be compliant with environmental norms and that the petitioner was free to take action before concerned authorities and take legal remedies in accordance with law.

[217] *See* Section 19(4), NGT Act.



Open solid waste dumping in hill stations such as Kullu and Manali © Kanika Bansal for Wire

30. **Court on its Own Motion v. State of Himachal Pradesh** Original Application 389 of 2018 Dec 22, 2021 ③

planning in Manali and Rohtang Pass areas, carrying capacity, vehicular impact, solid and liquid waste, air pollution, eco fragile area

The issue for consideration is the remedial steps for maintaining ecology in the area of Manali and Rohtang Pass in H.P. In the light of the previous directions by the tribunal regarding the development of solid waste management facility at Manali, Construction of Eco-friendly markets at Marhi, Upgradation of existing Sewage Treatment plants, establishment of electric buses, installation of weigh in motion, keeping a check on vehicular emission, the Tribunal was in the view that the authorities should continue to monitor the remedial steps for maintaining the ecology in Manali and Rohtang Pass in H.P. It reiterated that a constant vigil is required by ground level authorities in addition to supervision of and coordination with higher level authorities to ensure protection of the ecology.

Month of January, 2022 (4)

31. **Ishlam Deen v. State of Himachal Pradesh**

noise pollution by mobile tower, proximity to habitation, scope of consent mechanism for diesel generator sets, review powers of NGT, individual grievance

The application was filed to seek an execution of order dated 19th October 2020 in Original Application 220 of 2020 which had directed

the H.P. State PCB to look into the noise pollution created as a result of setting up a mobile tower in Post Gummar Village, Jwalamukhi Tehsil, Kangra District and take appropriate measures in accordance with CPCB guidelines on the subject.

a. **Ishlam Deen & Ors. v. State of Himachal Pradesh** **Execution Application 27 of 2021 in Original Application 220 of 2020, 2022 SCC OnLine NGT 8** **Jan 3, 2022** ③

The petitioner had alleged that no action was taken in pursuance of the order passed in Original Application 220 of 2020. In the report submitted by the State PCB, the mobile tower in question was installed with a backup DG set (Diesel Generator) with the capacity of 10 kilo-volt amperes (KVA) in case of power failure. In accordance with the issue of grant of consent to a DG set, according to the CPCB, a stand-alone DG set having total capacity less than 1 mega-volt ampere (MVA) equipped with acoustic enclosures alongside appropriate stack height are exempted from the consent management mechanism[218]. The DG set in question is less than 1 MVA and has been provided with an acoustic enclosure and exhausted muffler and therefore it did not fall under the consent mechanism of the State PCB. Additionally, the results from the noise and ambient air monitoring were found within the prescribed limits. As the report submitted was not contested by either of the parties, the Tribunal did not deem any action necessary.

[218] *See* Modified directions to SPCBS/PCCc on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories dated 7th March, 2016, at page 49.

b. ⑥ **Ishlam Deen & Ors. v. State of Himachal Pradesh** Review Application 7 of 2022 in Execution Application 27 of 2021 in Original Application 220 of 2020 Apr 6, 2022

This issue was earlier heard by the tribunal at two different stages including via an execution petition, since it had remained unresolved. On the latter occasion the Tribunal had disposed of the matter considering a report which suggested that the noise levels were within permissible limits. The petitioner had not contested the report then, however, filed a 'review' petition against that order on this occasion. The Tribunal refused to entertain the petition considering the fact that the petitioner was seeking 'rehearing' in the garb of review, which is a narrow remedy under law. However, the Tribunal clarified that it was open for the petitioner to approach the magistrate concerned under the criminal procedure code considering the individual nature of the grievance at hand[219].

32. **Pyar Singh v. State of Himachal Pradesh** Original Application 424 of 2021 Jan 25, 2022 ②

dust and noise pollution by woodworking machines, public health

The application was filed against the heavy woodwork machines that operated day and night in Santhal, Mandi District. The petitioner stated that the continuous work generated dust and noise pollution. Additionally the smell of the painted wood is a serious health hazard to locales. The Tribunal directed the State PCB, Superintendent of Police

[219] *See* generally, Section 25(2), NGT Act.

at Mandi District and the DM at Mandi to look into the matter and take remedial action.

33. **Mahila Mandal v. State of Himachal Pradesh** Original Application 448 of 2021 Jan 27, 2022 ②

encroachment in forest, soil erosion

The application was filed against encroachment of forest land and destruction of trees by one Vijay Kumar in Chamba District. The petitioner also stated that the forest department refused to take action when the same was brought to their notice. The Tribunal directed the DFO, Chamba district to take appropriate remedial action.

34. **Champa Thakur v. State of Himachal Pradesh** Original Application 32 of 2022 Jan 31, 2022 ②

unauthorized construction in mountainous area, construction in public forest, blocking of water stream

The petitioner reported an unauthorized construction of a steel structure in a government forest in Lower Ram Nagar, Shimla which was restricting a water stream. The petitioner alleged that this 300 meter long construction is for the purpose of creating a path to a private building. The Tribunal directed the DFO, Shimla to look into the matter and take required remedial action.

35. ⑥ **Rajinder Kaur v. Union of India** 2022 SCC OnLine NGT 54 Feb 9, 2022

illegal stone crushing, public health, siting criteria for stone crushers

The application was brought against illegal stone crushing operations conducted within the prohibited distance from the Abadi Deh village in Mohal Piplu and Mauja Guglehar, Una District. According to the report submitted by the joint committee of State PCB and SDM, Una, the operation was 502 meters away from the revenue village[220] which was beyond the prescribed distance. In the view of the above, the Tribunal found that norms in regard to control of noise and ambient air quality need to be duly followed.

36. ⑤ **Usha Chand v. State of Himachal Pradesh** Original Application 283 of 2021 Feb 10, 2022

pollution caused by furnace, public health, emission standards for industrial area

The application was filed raising issues of air and noise pollution by Goyal Furnace in Sansarpur Terrace, Kangra District. The Tribunal had previously asked the State PCB to look into it and report back. The state PCB in its report mentioned that ambient air quality monitoring and noise monitoring were under the prescribed limit. The Stack Monitoring result was above the prescribed limit for which the unit was given 15 days to make the due changes. The inspection after 15 days

[220] For an interpretation of 'village', *see* Des Raj v. State of Himachal Pradesh, 2012 SCC OnLine HP 3415.

gave satisfactory results for stack monitoring. As the remedial actions were already taken by the State PCB, the Tribunal disposed of the application.

Month of March, 2022 (3)

37. In re: News item published in The Tribune dated 22.02.2022 titled "7 killed in blast at firecrackers factory in Himachal Una
Original Application 143 of 2022 Mar 8, 2022 ③

death and serious injury due to blast, hazardous substances, explosives, industrial accidents, absolute liability, public trust doctrine, environmental compensation, *parens patriae*, restitution, ex-gratia payment

This case concerns a large number of deaths and injuries caused in part due to violation of key environmental norms relating to hazardous chemicals at a firecracker factory in Una, H.P. The PCB found the operation of the factory to be completely illegal under environmental and various other laws. The Tribunal recalled more than a dozen recent cases dealing with industrial accidents wherein it had imposed a flat compensation rate of 20 Lakh Rupees per deceased individual in line with the principle of absolute liability[221]. It imposed the same in this case in addition to criminal liability and other payments made ex-gratia[222].

[221] *See* M.C Mehta v. Union of India, (1987) 1 SCC 395.

[222] [*Latin* "by favor"] As a favor; not legally necessary. - Also termed a gratia, Black's Law dictionary, 9th Edition.

38. In re : News item published in The Hindu dated 27.02.2022 titled "Tourism has brought economic prosperity to the Himalayan region, but the environmental cost has been catastrophic", 2022 SCC OnLine NGT 87 Mar 9, 2022 ④

eco sensitive region, unregulated tourism, sustainable development principle, solid waste, groundwater contamination, air pollution, public health, burning of waste, carrying capacity

This case concerns the broad issue of large scale pollution attributable to tourism in the 12 Himalayan states of India. It was taken up by the Tribunal based on a news report published on this issue mentioning that tourism alone creates 8 million tons of waste annually in these states each year. The Tribunal directed the G.B. Pant National Institute of Himalayan Environment, Almora to work with the administration of each of these 12 states, taking into account judgments passed with regard to individual mountain zones in the past, and report with detailed plans within 6 months.

39. ⑤ **Gulshan Kumar v. State of Himachal Pradesh Original Application 213 of 2022 Mar 31, 2022**

debris outflow due to construction of road, biodiversity, restoration, blasting

This case concerns blasting in the process of road construction at Kamalah, Mandi, H.P. The petitioner alleged that this blasting is adversely affecting the flora and fauna of the region. The Tribunal directed the DM to take remedial action and remove unscientifically dumped debris.



Industrial pollution in Baddi © Tribune India

40. ⑥ P Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh

river pollution in industrial area, antimicrobial resistance, antibiotics, liquid waste, biodiversity, review powers of NGT, enforcement of draft notification by NGT, planning, outdated technology, water bodies, drug standards, public health, national security, market competition, active pharmaceutical ingredients

This case concerns pollution of rivers Balad, Sirsa and Sutlej in Baddi Industrial area in Solan District of H.P[223].

a. Veterans Forum for Transparency in Public Life Applicant v. State of Himachal Pradesh & Ors. Original Application 136 of 2020 Apr 6, 2022

The facts demonstrate two broad issues - (a) the risk of antimicrobial resistance (AMR) developing as a result of discharge of large amounts of active pharmaceutical ingredients (API) in water bodies, and (b) the inability of Common Effluent Treatment Plants and Industrial units to treat effluents before discharge into water bodies. These issues were exacerbated due to the lack of effluent standards developed by the CPCB, monitoring by PCBs concerning violations, and creation of new classes of effluents due to mixing, which were not predicted by existing law and technology. In the meantime, at the instance of the Tribunal, expert reports from the CPCB and MoEF led to guidelines and

[223] For detailed coverage on the issue of effluent discharge in the Baddi Industrial Area, *see* article titled "Living in toxicity: Industrial Pollution in Himachal Pradesh's Baddi", available at https://thebastion.co.in/politics-and/living-in-toxicity-industrial-pollution-in-himachal-pradeshs-baddi/.

standards to tackle these complex issues. The Tribunal reiterated its earlier directions that defaulting industries are to be closed and held accountable under law by the PCB. It also took a serious view on the absence of standards for certain pharmaceutical compounds (even in the final notification developed by the MoEF during the course of the proceedings) and directed that "pending finalization by the MoEF&CC, standards proposed in the draft Notification dated 23rd January, 2020, which are based on expert studies, be strictly followed by all concerned". Finally it directed PCBs across India to strictly abide by the CPCB guidelines to tackle such issues developed in 2022 particularly with respect to "monitoring of API and assess Predicted No-Effect Concentration (PNEC) values" and for effluent treatment plants to be suitably upgraded.

b. Review Application 14 of 2022 in Original Application 136 of 2020, filed by MoEFCC May 24, 2022

This case concerns a judgment concerning dumping of pharmaceutical waste in rivers by industries in Baddi Industrial Area. In that judgment, the Tribunal had directed the enforcement of draft standards with regard to active pharmaceutical ingredients and other compounds, in light of the alarming state of affairs and risk of resistant pathogens developing due to contact with these effluents. The draft standards developed by the MoEFCC had not yet been finalized due to various issues including market pressures and competition with the Chinese pharmaceutical market. The Ministry approached the Tribunal seeking a review of its judgment on the ground that the Tribunal could not have enforced draft standards. The Tribunal rejected the application stating that a rehearing of the matter could not have been permitted based on a review application and more importantly, it had the

jurisdiction to enforce principles of sustainable development under law, even if these were beyond[224] decisions made by the Ministry. The Tribunal relied on a 2019 SC judgment to substantiate its reasoning, where its wide ranging powers were upheld by the court.

41. ⑥ P **Rita Sharma v. State of Himachal Pradesh** Original Application 5 of 2020 Apr 7, 2022

solid waste mismanagement, burning waste, air pollution, public health, forest fires, biodiversity, livestock, irrigation, water bodies, scavengers, segregation of waste, legacy waste, remediation

This case concerns mismanagement of legacy waste which is being burnt, causing air pollution, resulting in diseases, loss of livestock and contributing to forest fires and loss of wildlife in Dughneri, Hamirpur, Himachal Pradesh in violation of the Air and Water Acts. According to the petitioner, this is leading to an increase in the population of monkeys, feral dogs and scavengers namely crows and vultures. Due to the gradient of the terrain, water flowing through these sites is getting contaminated and in turn contaminating surrounding water bodies which are also used for agricultural purposes. On account of multiple failures by the state administration, the Tribunal had directed the Principal Secretary of Urban Development to remain in person and show cause as to why violations were continuing, on the last date of hearing. The Secretary and Municipal Council had also filed detailed reports (see also) in the meanwhile, stating in sum that work of crucial measures including construction of retaining wall, storm water drain,

[224] For a recent commentary on the powers of the NGT, *see* Madhya Pradesh High Court Advocates Bar Association v. Union of India, 2022 SCC OnLine SC 639.

covering of solid waste treatment facility, fencing, road, water pump and allied facilities was completed.

The Tribunal, on going through these reports found that (a) the waste itself remained unremediated due to lack of segregation at source, (b) construction of storm water drain was not in conformity with local terrain, and (c) suboptimal use of compost pits. The Tribunal also remarked on the inconsistent solid waste treatment policy at the state level leading to Municipal Councils having their own way. The Tribunal directed the State to file further remedial measures with the registry, and that if necessary the registry may place the issue before it for consideration.

42. D.V Girish v. Union of India 2022 SCC OnLine NGT 117 Apr 21, 2022 ②

conservation planning in PAs, carrying capacity, eco sensitive and eco fragile areas, merit review by NGT, precautionary principle, identification of eco sensitive and eco fragile areas

This case concerns the carrying capacity assessment of ESZs and eco fragile areas (EFA) across the country[225]. The issue itself was resolved by the Tribunal with directions to the MoEF, CPCB and concerned states and union territories to conduct a carrying capacity study of at least one eco-sensitive area per state/union territory. The order of the tribunal cited various carrying capacity assessments done, including those for major cities in Himachal Pradesh such as Dharamshala,

[225] *See* report titled "India's Notified Ecologically Sensitive Areas (ESAs): The story so far …", available at https://wwfin.awsassets.panda.org/downloads/indias_notified_ecologicallysensitive_areas.pdf.

Kasauli and Manali. The Tribunal noted that the form of those studies may be considered in the process of assessing capacity at a national level.

In compliance with the orders of the Tribunal, CPCB filed a carrying capacity study for Sanjay Gandhi National Park ("SGNP") in Mumbai in compliance with those directions, hence this case. The assessment itself was carried out by CSIR-NEERI, and identified 106 national parks for the purpose of undertaking carrying capacity study. Crucially, the report noted that the studies for the remaining national parks may follow the template applied to SGNP. The report also suggested strict adherence to pollution and planning norms to be enforced by the forest departments, PCBs, and state and union territory administrations.

The Tribunal found various inadequacies in the report including those with respect to assessment of socio economic, tribal, wildlife, disaster management, and sustainable eco-tourism issues. Of utmost importance is the fact that the Tribunal noted the need for carrying capacity assessments to be done "for ecologically sensitive areas not notified as such but providing significant ecological services needing protection from activities which may need to be prohibited or regulated on the concept of sustainable development[226]". The Tribunal established a '**likelihood**' threshold for threats to any such area, from any unregulated or unsustainable activities. The threats indicated by the Tribunal included "hazardous activities like mining and quarrying,

[226] *See* generally, article titled "Safeguarding wildlife beyond protected areas in India: A review of laws, policies and other conservation tools", available here.

stone crushers, encroachment and excessive constructions, excessive tourism, activities in conflict with wildlife habitats".

Based on these observations and the report placed on record, the Tribunal directed the MoEF to get conservation plans prepared for all the Notified ESZs and EFAs, specifying prohibited/regulated activities within specified distance from core areas. The Tribunal also directed all Chief Secretaries to "identify ESZs and EFAs for preparing and regulating conservation plans and take further measures accordingly".

Union Territories of Jammu & Kashmir and Ladakh

Month of October, 2021 (2)

43. Chief Executive Officer, Municipal Council, Bandipora, Kashmir v. Jammu and Kashmir Pollution Control Board 2021 NGT OnLine NGT 268 Oct 21, 2021 ④

solid waste dumping, appeal filed by agency, environmental compensation, polluter pays principle, past violations, financial constraints at local level, refuse derived fuel, planning, restoration

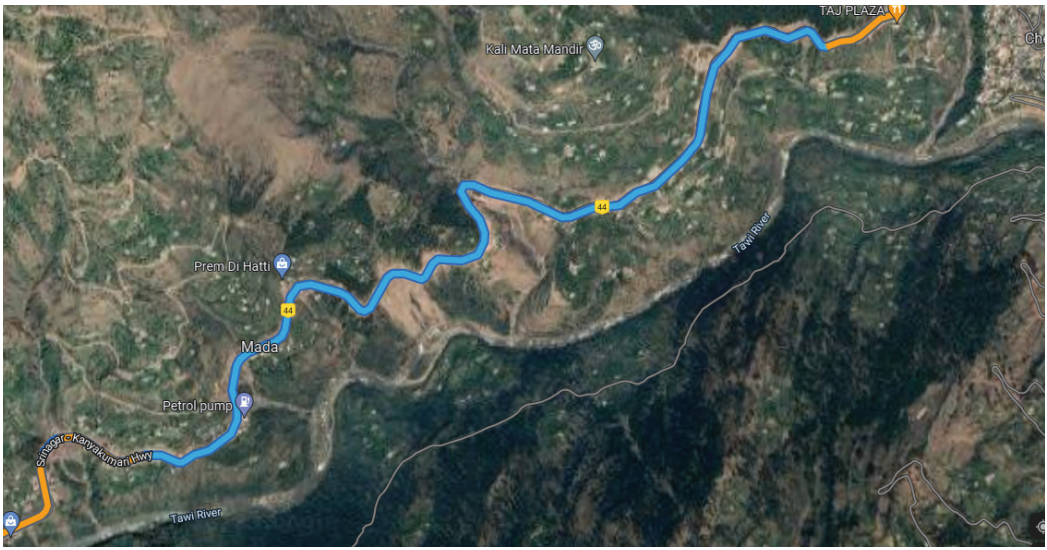
This case concerns a challenge to directions passed by the PCB seeking environmental compensation[227] for continuing dumping of solid waste and allied issues in Bandipora, JKL (in the Wular lake catchment[228]). The Municipal Council of Bandipora made the challenge on the ground that it had remedied all illegalities in waste dumping. However,

[227] *See* Report of the CPCB In-house Committee on methodology for assessing environmental compensation and action plan to utilize the fund, available here.

[228] *See* Section 2(j) of Wetlands (Conservation and Management) Rules, 2017.

the Tribunal, citing its previous decisions with respect to protection of water bodies in the JKL and compensation mechanisms for illegal solid waste dumping, refused to interfere with the order of the PCB. According to the Tribunal, remedial actions do not undo the environmental impact of past illegalities[229], and therefore, compensation on a scale suggested by the CPCB had to be recovered from the Council. The Tribunal also directed for an action plan to be prepared and implemented by the PCB and DM to stop any unscientific waste dumping and disposal. Importantly, the Tribunal relied on orders passed in other cases where a rule with respect to compensation and remedial measures for JKL had already been developed, and applied it uniformly in a new case which came before it.

[229] *See* M.C. Mehta v. Union of India (Shriram - Oleum Gas), (1987) 1 SCC 395, Sterlite Industries (India) Ltd. v. Union of India, (2013) 4 SCC 575, and Goel Ganga Developers India (P) Ltd. v. Union of India, (2018) 18 SCC 257.



A stretch on the Udhampur-Banihal Highway depicting slippage of muck into the Tawi © Google Maps

44. P **Amresh Singh v. Union of India** 2021 SCC OnLine NGT 274 Oct 29, 2021 ④

dumping of muck in rivers during highway construction, continuing violation of orders of NGT, muck disposal siting, rule of law, environmental compensation, restoration, private contractors, polluter pays principle, environmental compliance monitoring panel

This case concerns dumping of muck by contractors and subcontractors of the NHAI during the process of four laning of the National Highway from Udhampur to Banihal in JKL. The Tribunal initially restrained the contractors from any dumping in rivers Tawi and Chenab but on continuing violations, another petition was filed on the same issue, asking for the orders of the Tribunal to be executed. An expert committee constituted by the Tribunal recommended remedial measures including stabilizing hill slopes where construction was taking place and building walls to prevent down flow of muck. The Tribunal had constituted a monitoring committee headed by a retired judge of the Jammu, Kashmir and Ladakh High Court, to ensure that remedial steps were implemented. From 2019 to 2020, the violations continued and the Tribunal responded by gradually increasing the quantum of compensation payable by the contractors on the basis of expert reports. However, the violations continued, and the Tribunal directed the monitoring committee to assess the quantum of compensation and sought personal presence of senior most officers of the NHAI. It noted the connection between ill-planned dumping sites and pollution in rivers and narrowing of river channels, and also directed the PCB to assess the change in water quality of the impacted areas of the rivers. Importantly, on noting that the violations were

continuing for so long, the Tribunal found these violations to be deliberate and required a stringent response, including imposing liability on senior most officers.

The NHAI responded by initiating prosecution against the erring contractors and reopening bids for construction work. The Jammu & Kashmir State Pollution Committee responded by assessing the requisite compensation to be approximately 129 crores. During this time, it was also found that the district administration was issuing permits for hillside blasting, on a stretch of topography which was found to be particularly dangerous due to instability and rock falls. The Tribunal also refused to entertain the argument made by the Highways Authority concerning liability lying on the contractors and not the authority itself, emphasizing that the Authority is responsible for restoration albeit at the cost of contractors as per the existing legal principles of polluter pays and vicarious liability[230].

The Tribunal directed the NHAI to set aside an amount of 129 crores for restoration of past and apprehended future environmental damage, prepare a plan for restoration within a month, and implement it within six months. Most importantly, the Tribunal directed the NHAI to constitute an internal environmental and forest clearance compliance cell reporting directly to its chairperson to prevent recurrence of such incidents for various developmental activities being undertaken by it.

[230] Vicarious liability extends to heads of the departments under Sections 25, 26 and 28 of the NGT Act.

45. P **Raja Muzaffar Bhat v. State of Jammu and Kashmir** 2021 SCC OnLine Nov 25, 2021 ③

wetland identification and restoration across the nation, biodiversity, planning, solid and liquid waste, satellite mapping of wetlands, applicability of Wetland Rules, wise use of wetlands, center/state jurisdiction over wetlands, rule of law, district environmental plan

This case initially concerned unscientific dumping of waste and encroachment of Hokersar Wetland, Wular Lake and Kreentchoo-Chandhara Wetland in the Union Territory of JKL, but its scope was later expanded to wetlands in the entire nation. Connecting this issue to the ongoing work of the Union Government in preparing a comprehensive inventory of wetlands nationally, the Tribunal referred to the M.K. Balakrishnan case in the SC.

In that case, the SC had directed the Union Government to notify the Wetland (Conservation and Management) Rules on or before 30.06.2017 and provide details of steps taken to conserve Ramsar sites in India. In the information provided, the Government mentioned 2,01,503 (each having an area greater than 2.25 Hectares) wetlands for which information had to be collected with assistance from states and union territories. Crucially, even prior to information collection, the SC directed that the Wetland Rules of 2010 be made applicable to all 2,01,503 wetlands and measures to conserve be put in place as per Rule 4 of the 2010 rules. The court expressed concerns over the delay in satellite mapping of wetlands, considering the possibility of various

such water bodies disappearing altogether before the mapping process is completed.

In addition to the comprehensive directions of the SC, the Tribunal, in this case, had formed an oversight committee to assess the damage done to the three wetlands in question and suggest remedial steps. Directions were passed for an action taken report to be prepared mentioning the remedial steps taken, and also to complete the process of mapping as directed by the SC, whilst citing judgments in the cases of Almitra Patel, Paryavaran Suraksha Samiti, and Polluted River Stretches.

The report submitted by the committee considering remedial steps in JKL suggested the presence of major challenges including silting, flooding, weed infestation, and encroachment in most wetlands in that state despite these being declared as conservation reserves under the Wildlife Protection Act, 1972. Finding the report to be incomplete with respect to remedial steps proposed for these challenges, the Tribunal directed for another report to be submitted, under the supervision of the JKL Chief Secretary.

In considering another report with respect to remedial steps and management for wetlands at the national level, the Tribunal noted the scheme of preparing 'health cards' for all wetlands mapped, and the continuing inadequacy of information collected in furtherance of directions of the SC. In this respect, the Tribunal directed for comprehensive action plans to be prepared for all 2,01,503 wetlands in collaboration with local authorities and duly submit annual status reports. Crucially, the Tribunal directed that the decision as to whether

a wetland is significant or not also take livelihood sourcing, presence of replicable traditional knowledge with respect to wise use of wetlands, and the degree of enforcement action taken to manage threats to wetlands.

In response to these various directions, the Ministry of Environment and Forest as well as Jammu & Kashmir and Ladakh filed reports detailing schemes to protect wetlands, including demarcation, disbursal of funds, identification of laws applicable to different wetlands, publishing of guidelines to the 2017 wetland rules and the creation of a centralized web portal on wetlands of the country. The Government of JKL took a stand that it will ensure implementation of action plans for wetlands within its territory on a monthly basis. However, the Ministry stated that water being subject to jurisdiction of states, cannot be regulated by the central government. The Tribunal expressed its disappointment and made it clear that the issue did not concern water alone and that environment protection was well within the domain of the central government as per Schedule 7, List 1, Entry 13.

The Tribunal noted that the list of wetlands in fact could far exceed the 2,01,503 figure provided by the Government. It directed all states to create an exhaustive inventory of all such wetlands within their territory and relay the information to the National Wetland Authority, **irrespective of the 2.25 hectare threshold, and extend protections under the wetland rules to those**. Secondly, the Tribunal directed the Government to include wetland protection within District Environment Plans which it directed for in another case. In expressing

its confidence that these measures will ensure protection of wetlands, the Tribunal disposed of the case.

Month of December, 2021 (1)

46. Abdul Majeed Najar v. Umar Soil and Constructional Works
Original Application 331 of 2021 Dec 7, 2021 ③

construction of road in forest area, grazing/common land, Pradhan Mantri Gram Sadak Yojna, public interest, threshold under Section 14, due process

This case concerns a permit given for construction of a road from Thune to Baddi in Ganderbal, on common (grazing) land[231], which, according to the petitioner, was a forest area. According to the petitioner, a tender was issued even before any permits were granted under the Forest (Conservation) Act, 1980. The Tribunal refused to interfere with the construction considering that the road was for a public utility purpose under the Pradhan Mantri Gram Sadak Yojana, and that there was lack of clarity as to whether the land involved was forest land. The Tribunal however directed the Forest Department of Ganderbal to ensure that due process of law be followed if forests are involved.

[231] For a recent commentary on encroachment of grazing land, *see* Rameshbhai Virabhai Chaudhari v. State of Gujarat, Civil Appeal No. 5135 of 2021, order dated 6th September, 2021.

47. Joginder Bhandari v. Union Territory of Jammu and Kashmir
2022 SCC OnLine NGT 66 Feb 17, 2022 ④

muck dumping at hydroelectric project site, blockage of water stream, road construction, liability for past actions, polluter pays principle, environmental compensation, District Environment Plan

The application was brought against unscientific muck dumping in Arzi Nallah by AFCONS Infrastructure limited and L & T limited at Pakal Dul Hydroelectric Project in District Kishtwar, JKL resulting in damage to the environment. The project is one of ten such projects in the works in Himachal Pradesh and JKL amounting to a total of 6.8 Giga Watts. On the basis of the reports submitted by the state PCB, the Tribunal came to a conclusion that illegal muck dumping was taking place on the bank of the drain, obstructing its natural course. The Tribunal noted that mere undertaking to not dump further muck did not account for past violations. Further, the wire crates used for preventing muck dumping which may not be adequate to remedy the situation. The Tribunal directed both AFCONS and L&T to deposit Rs 1 Crore each with the state PCB to be utilized for restoration of the damaged environment.

48. ⑤ **People's Union of Legal Rights v. Principal Chief Conservator of Forests** Original Application 214 of 2022 Mar 31, 2022

management of trees by the forest department, marking, felling and transporting trees, threshold under Section 14 of NGT Act, determination by a High Court, challenge to a non-schedule I executive instrument, management plan for Acacia trees, agriculture

This case concerns a challenge to an order passed by the Government of JKL with respect to marking, felling and transportation of trees. Via that order, the Government permitted Forest Department officers to remove Khair or Acacia trees from farmland under a management plan for forests of the region, which had expired earlier in 2016. The order made an extension to that plan to allow for the removal mentioned. Earlier, the High Court at JKL had not found it necessary to pass directions concerning this issue. The Tribunal found that there was no substantial question relating to the environment[232] and as such, the High Court had already gone through the matter and correctly found the matter to have been dealt with under the Jammu & Kashmir Non-Forest Land Khair Trees 'Acacia Catechu' (Management Plan) Rules 2016.

[232] For a commentary on the scope of "substantial question related to the environment", *see* Techi Tagi Tara v. Rajendra Singh Bhandari, (2018) 11 SCC 734.

49. **Acharya Shri Chander College of Medical Sciences & Hospital v. J & K Pollution Control Board** Appeal 21 of 2022 May 23, 2022 ③

biomedical waste mismanagement, past violations, powers of PCB, environmental compensation

This case concerns mismanagement of biomedical and general waste by a medical college and hospital in Sidhra, Jammu, Kashmir and Ladakh. The PCB had earlier in 2012 conducted an inspection wherein various deficiencies in treating waste were found including with respect to sewage and effluent treatment, incineration, dumping on slopes and emissions. From 2013-19, the College, via various letters, represented before the Board that it had been taking various remedial measures. However, based on photographic evidence, the Board, via a notice in 2020, imposed an environmental compensation of Rupees 1,37,34,800 on the College also citing no change in ground evidence. The College then filed an appeal against these directions before the appellate authority of the board on the ground that photographic evidence should not have been acted upon. That authority upheld the imposition of environmental compensation. The college took the ground that it had been taking remedial measures and that imposition of compensation based on photographic evidence was erroneous, before the Tribunal. The Tribunal rejected these contentions stating that there was no dispute with regard to past violations and in light of verified ground information. Importantly, the Tribunal found that the college would be liable for any default of a waste treatment agency appointed by it.

50. **Chief Executive Officer, Municipal Council, Sopore v. J & K Pollution Control Board** Appeal 23 of 2022 May 25, 2022 ③

solid Waste dumping in ecologically sensitive area, forest land, river floodplain, environmental compensation, wetland, District Environment Plan, review of order passed by PCB, pendency of issue in High Court

This case concerns illegal and unscientific dumping of solid waste by the Municipal Council, Sopore, in forest land, on flood plain of Jhelum and buffer zone of Wular lake. The PCB levied an environmental compensation of Rupees 1,30,46,000 as a result. The Council responded stating that the dumping was not taking place of forest land, water from the site could not physically reach the Wular lake and untold damage to the people of Sopore would be caused in light of no suitable alternate land. The Board rejected these contentions citing the unscientific manner of dumping, that too in low lying land. The Board also held that mere pendency of these issues before the High Court of JKL did not preclude an order seeking environmental compensation particularly considering the ground situation[233]. The Tribunal concurred with the viewpoint of the Board, finding a clear violation of the Solid Waste Rules, 2016. The Tribunal found no ground to interfere with the order seeking compensation and directed the said amount to be utilized for restoration of the environment as per the District Environment Plan for the area (developed due to direction passed in another judgment).

[233] *See* generally, State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (M.P.), 2022 SCC OnLine SC 728.

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46. Ashok Kumar Raghav v. Union of India, Writ Petition (Civil) 144 of 2023
47. The State of Himachal Pradesh v. Yogendra Mohan Sengupta, Civil Appeal 5348-5349 of 2019

List of abbreviations

1. **"IHR"** Indian Himalayan Region
2. **"WHR"** Western Hindu Kush Himalayan Region
3. **"SC"** Supreme Court
4. **"HC"** High Court
5. **"NGT"** National Green Tribunal
6. **"H.P"** Himachal Pradesh
7. **"U.K"** Uttarakhand
8. **"JKL"** Jammu & Kashmir and Ladakh
9. **"DM"** District Magistrate
10. **"PCB"** Pollution Control Board
11. **"NEERI"** National Environmental Engineering Research Institute
12. **"EL"** Environmental Law
13. **"HEL"** Himalayan Environmental Law
14. **"MoEFCC"** Ministry of Environment, Forest and Climate Change
15. **"CPCB"** Central Pollution Control Board
16. **"TCP"** Town and Country Planning Department
17. **"CS"** Chief Secretary
18. **"PA"** Protected Area
19. **"ESZ"** Eco Sensitive Zone
20. **"O.A"** Original Application
21. **"M.A"** Miscellaneous Application
22. **"BPCL"** Bharat Petroleum Corporation Limited
23. **"MW"** Megawatt
24. **"EIA"** Environmental Impact Assessment
25. **"NMCG"** National Mission for Clean Ganga
26. **"ICAR"** Indian Council of Agricultural Research
27. **"UJVN"** Uttarakhand Jal Vidyut Nigam
28. **"Cr.P.C"** Code of Criminal Procedure
29. **"MC"** Municipal Corporation

30. **"CAMPA"** Compensatory Afforestation Fund Management and Planning Authority
31. **"SEIAA"** State Environment Impact Assessment Authority
32. **"PCCF"** Principal Chief Conservator of Forests
33. **"PCCF (HoFF)"** Principal Chief Conservator of Forests (Head of Forest Force)
34. **"DSR"** District Survey Report
35. **"GMVN"** Garhwal Mandal Vikas Nigam
36. **"EC"** Environment Clearance
37. **"EP Act"** Environment Protection Act, 1986
38. **"NOC"** No Objection Certificate
39. **"SIDCUL"** State Industrial Development Corporation of Uttarakhand Limited
40. **"SDM"** Subdivisional magistrate
41. **"FRA"** The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
42. **"PWD"** Public Works Department
43. **"SSMG"** Sustainable sand mining guidelines, 2016
44. **"EMGSM"** Enforcement & Monitoring Guidelines for Sand Mining, 2020
45. **"NHAI"** National Highways Authority of India
46. **"EFA"** Eco fragile area

Notes



This handbook systematically records the state of the environment of the western Himalayas of India, as reflected in proceedings before the National Green Tribunal, over a period of two years beginning May, 2021.

"A mammoth task" - Rahul Choudhary, Cofounder, Legal Initiative for Forest and Environment, Delhi

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